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Annex: Australian Federal, State and Territory human rights agencies

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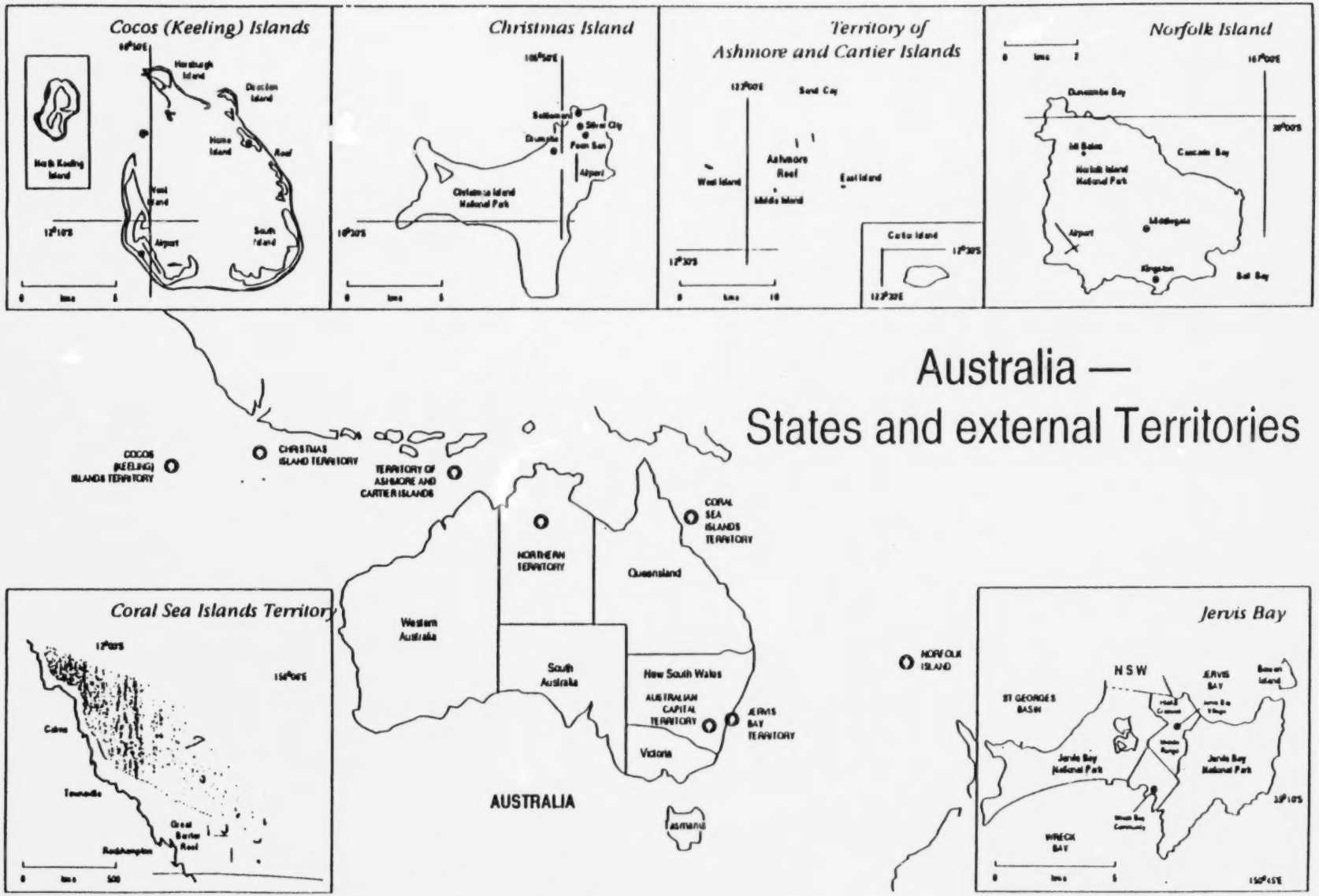
The Australian States and Internal Territories


Cocos (Keeling) Islands
Christmas Island
Territory of Ashmore and Cartier Islands
Norfolk Island
Australia — States and external Territories
COCOS (KEELING) ISLANDS TERRITORY
CHRISTMAS ISLAND TERRITORY
TERRITORY OF ASHMORE AND CARTIER ISLANDS
CORAL SEA ISLANDS TERRITORY
NORTHERN TERRITORY
Queensland
Western Australia
South Australia
New South Wales
AUSTRALIAN CAPITAL TERRITORY
JERVIS BAY TERRITORY
Victoria
AUSTRALIA
Coral Sea Islands Territory
Jervis Bay
NORFOLK ISLAND
NSW
ST GEORGES BASIN
JERVIS BAY
WRECK BAY

I. LAND AND PEOPLE

A. Overview

1. The following is a statistical overview of the territory, population and economy of Australia:

The Land

Area (square km)		7 682 300
Length of coastline (km)		36 735
Percentage of total area:	- Tropical zone	39
	- Temperate zone	61

The People

-	Population as at 30 September 1992	17 581 000
-	Urban population as per cent of total 1991 (cities over 100 000)	63
-	Number of inhabitants per square kilometre	2.3
-	Aboriginal and Torres Strait Islander population 1991	265 378
-	Per cent of total population	1.6
-	Population of State and Territory capital cities 1991:	
	- Sydney	3 097 954
	- Melbourne	2 761 996
	- Brisbane	1 145 542
	- Perth	1 018 702
	- Adelaide	957 480
	- Canberra	299 888
	- Hobart	126 306
	- Darwin	67 946
-	Per cent of population born overseas 1991	22.3
-	Per cent of population who speak a language other than English at home 1991 (persons aged 5 years or more)	17.4
-	Estimated per cent of people aged 5 and over who do not speak English at all	0.4
-	Estimated per cent of adult population unable to perform everyday reading and writing tasks in English	10.0
-	Religious affiliation as per cent of population 1991:	
	- Christian	74.0
	- Non-Christian	2.6
	- Other	23.4

- Life expectancy at birth 1991:
  - Males 74.35
  - Females 80.29
- Total fertility rate 1991 1.85
- Infant mortality 1991
  - Males 7.9
  - Females 6.3
- Maternal death rate per 100,000 confinements (1988-1990) 5.4
- Per cent of population under 15 (30 June 1992) 21.83

Per cent of population 65 and over (30 June 1992) 11.36

The Economy

- Gross Domestic Product Per Capita 1991/1992 $A 22 088
- Gross Domestic Product 1988 to 1992 (average annual percentage growth, 1989-1990 prices) 2.2%
- Inflation 1992 0.3%
- Average Annual Unemployment Rate 1992 10.8%
- Net External Debt ($A billion) 1992 155.5
- Australian dollar per United States dollar (average of daily figures 1992) 1.360

B. The land

2. Australia comprises a land area of 7,682,300 km^2. The following table shows the area of Australia in relation to areas of other countries:

Country	Area 000 km^2
Australia	7 682
China	9 590
Japan	372
United Kingdom	244
United States of America	9 636

3. The island continent of Australia features a wide range of climatic zones, from the tropical regions of the north, the arid expanses of the interior, to the temperate regions of the south.

4. Widely known as "The Dry Continent" the land mass is relatively arid, with 80 per cent having a median rainfall less than 600 mm per year and 50 per cent less than 300 mm. The areas receiving most rain are concentrated in the east of the continent, particularly in the coastal area, together with some limited areas of the west coast. Seasonal fluctuations can be great,

with temperatures ranging from above 50° C to well below zero. However, extreme minimum temperatures are not as low as those recorded in other continents not only because of its latitude but because of the absence of extensive mountain masses and because of the expanse of the surrounding oceans.

5. Although the climate can be described as predominantly continental, the insular nature of the land mass produces modification to the general continental pattern.

6. Australia can be host to any of nature's disasters, particularly droughts, floods, tropical cyclones, severe storms and bushfires.

C. The people

7. The principal source of demographic data used in this report is the 1991 Census. Where more recent information was available it has been used. The Census is conducted at five-yearly intervals. The most recent Australian Census was carried out on 6 August 1991. The following table gives the population of Australia:

Estimated resident population of Australia by State and Territory as at 30 September 1992 (thousand)

	Males	Females	Persons
New South Wales	2 980.3	3 008.8	5 989.1
Victoria	2 212.9	2 252.3	4 465.2
Queensland	1 531.2	1 525.7	3 057.0
Western Australia	838.9	830.9	1 669.8
South Australia	724.7	736.5	1 461.2
Tasmania	234.0	237.7	471.7
Australian Capital Territory	148.7	149.0	297.7
Northern Territory	88.8	80.5	169.2
Total	8 759.5	8 821.5	17 581.0

8. Australia's average annual growth rate between June 1989 and June 1992 was 1.42 per cent per annum. The sex ratio in June 1992 was 99.3 males to 100 females. Females outnumbered males in the 35-39 age group and from 60 years onwards.

9. Australia's population has more than doubled over the last 45 years with migration accounting for approximately 40 per cent.

10. Most of the Australian population is concentrated in two widely separated coastal regions. By far the largest of these, in terms of area and population, lies in the south-east, stretching in an unbroken crescent from South Australia through Victoria, Tasmania and New South Wales to Queensland.

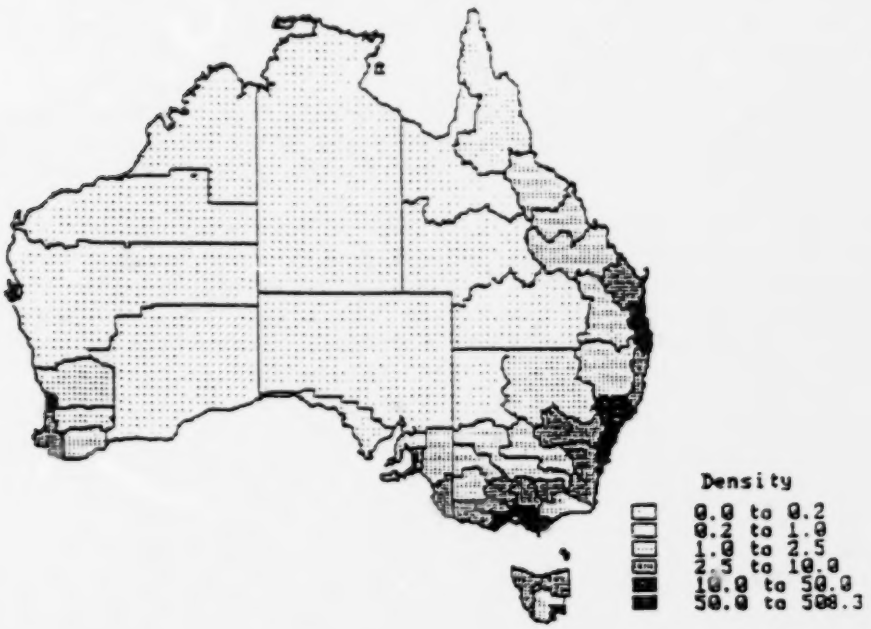
The smaller of the two regions is in the south-west of Western Australia. Neither region ever extends inland by more than 200 or 300 km. They are separated by 2,000 to 3,000 km of sparsely populated country which makes up about three quarters of the total land area. It comprises the whole of the Northern Territory and parts of all five mainland States.

11. In both coastal regions the population is further concentrated into capital cities, other major cities and towns. In 1991 63 per cent of the Australian population lived in the combined State and Territory capitals (including the national capital) and 6 other major cities of 100,000 persons or more (see table). The very low population density figures for Australia (two persons per km^2) mask this pattern of population distribution.

Urban/rural distribution - Census 1991

Size	Population	% Total population
Urban centres of over 100 000	10 562 554	63
1 000 to 99 999	3 775 305	22
Rural balance	2 500 206	15
Total	16 838 065	100

Population Density: Australia by Statistical Division
Persons per Square Kilometre - 1986 Census



12. The following table gives the Aboriginal and Torres Strait Islander population:

Aboriginal and Torres Strait Islander people - Census 1991			
	Males	Females	Persons
Aboriginal people	118 212	120 445	238 657
Torres Strait Islanders	13 392	13 329	26 721
Total	131 604	133 774	265 378

13. Aboriginal peoples have lived in Australia for at least 40,000 years. They are generally thought to have come to Australia from the South-East Asian mainland over an island network that existed during the last Ice Age. The size of the pre-colonial Aboriginal population is not known with accuracy, but estimates range from 300,000 to more than 1 million.

14. The Torres Strait Islanders are Australia's other indigenous people. Although often grouped with Aboriginal people, they have their own distinctive culture, traditions and history. Their homeland is the islands situated between the tip of Queensland - Cape York - and Papua New Guinea.

15. No one knows how long people have been living in the Torres Strait, but the islands were certainly inhabited when the first Europeans - the Spanish Torres expedition - visited in 1606. The Torres Strait Islanders' culture and way of life suggest that they are related to people on the Papuan coast nearby. The people who live off Cape York had regular contacts with their Aboriginal neighbours.

16. Aboriginal and Torres Strait Islander people maintained a sophisticated cultural life with each language speaking group essentially equating with a particular land area and having traditional ownership of that land.

17. Less than 25 per cent of Aboriginal and Torres Strait Islander people lived in cities of more than 100,000 people. One third lived in rural areas, over twice the rural concentration of the population taken as a whole. The indigenous population of the Torres Strait itself was 4,600, of whom the vast majority would be Torres Strait Islanders. That means that only approximately 16 per cent of Torres Strait Islanders now live in the Strait.

18. In 1991, Australia's population was 16,850,334. The sex ratio was 98.6 males to 100 females. Females outnumbered males in ages 25 to 39, and from 60 onwards. Women greatly outnumber men in the older age cohorts, and the differential increases with age. Because of their greater longevity, women are more likely to be widowed, to live alone or to live in a residential care setting in old age. In 1991, 58 per cent of all people living alone were women.

19. The number of households headed by women is difficult to ascertain because it is not clear from Census data who is the head in the case of couple families. In 1991, 9 per cent of all families in Australia were sole parent families. The parent was a female in about 87 per cent of these families.

20. Of the people counted in the 1991 Census, over one fifth (nearly 4 million people) were born overseas. More than 1 million of them were born in the United Kingdom and Ireland and this was by far the largest single group, accounting for 31 per cent of all people born overseas. Overall, 61 per cent of people born overseas were born in Europe. A further 18 per cent were born in Asia with the largest single group born in Viet Nam. The following tables show the percentage of the population born overseas and their places of birth:

Percentage of population born overseas		
Census year	Census count	% born overseas
1971	12 755 638	20.2
1976	13 548 448	20.1
1981	14 576 330	20.9
1986	15 602 156	20.8
1991	16 850 334	22.3

Birthplace (regions)				
	Males	Females	Persons	% Population
Oceania and Antarctica:				
Australia	6 276 914	6 448 253	12 725 167	75.5
Other	175 994	175 184	351 178	2.1
Total	6 452 908	6 623 437	13 076 345	77.6
Europe and USSR				
Europe and USSR (not further defined)	339	300	639	0.0
United Kingdom and Ireland	589 710	585 133	1 174 843	7.0
Southern Europe	350 062	312 503	662 565	3.9
Western Europe	135 268	128 638	263 906	1.6
Northern Europe	14 614	12 715	27 329	0.2
Eastern Europe	66 997	59 966	126 963	0.8
USSR and the Baltic States	21 132	23 396	44 528	0.3
Total	1 178 122	1 122 651	2 300 773	13.7
Middle East and North Africa:				
Middle East	71 015	63 231	134 246	0.8
North Africa	19 705	18 413	38 118	0.2
Total	90 720	81 644	172 364	1.0
South-East Asia	176 762	200 989	377 751	2.2
North-East Asia	98 103	101 185	199 288	1.2
Southern Asia	56 587	54 224	110 811	0.7
Northern America	38 132	37 037	75 169	0.4
South and Central America and Caribbean	35 037	36 920	71 957	0.4
Africa (excl. North Africa)	47 227	47 203	94 430	0.6
Other	1 594	1 591	3 185	0.0
Not stated	188 575	180 336	368 911	2.2
Total	8 363 767	8 487 217	16 850 984	100.0

Multicultural Australia

21. Australia's non-discriminatory immigration policy has resulted in a diverse society in which people of different ethnic and racial origins live together sharing a commitment to the language, laws, institutions and interests of Australia.

22. The Government's policies on multiculturalism are founded on three principles:

- Cultural identity: the right of all Australians, within carefully defined limits such as the rule of law and parliamentary democracy, to express and share their individual cultural heritage, including their language and religion;

- Social justice: the right of all Australians to equality of treatment and opportunity, and the removal of barriers of race, ethnicity, culture, religion, language, gender or place of birth;

- Economic efficiency: the need to maintain, develop and utilize effectively the skills and talents of all Australians, regardless of background.

23. Multiculturalism accepts the contribution of all cultures to Australia but it is not a policy to encourage ethnic or cultural separatism. Rather, it is a policy to provide all Australians, including the original inhabitants, the Aboriginal and Torres Strait Islander peoples, and the descendants of all later immigrants, with the opportunity to participate fully in and contribute to Australian society.

24. As public policy multiculturalism encompasses those government measures designed to respond to the cultural and ethnic diversity of contemporary Australia. The Federal Government and some of the State governments have adopted access and equity policies aimed at ensuring that all residents of Australia enjoy equal access to the resources managed by the Government on behalf of the community. The object of the access and equity strategy is to remove the barriers of race, language, religion or culture in policy formulation, programme design and service delivery. Measures now in place to help achieve this aim include the provision of information in languages other than English, access to the telephone interpreter service, cross-cultural training of public servants and community consultations.

25. This strategy also contributes to the Government's focus on strengthening social cohesion between various elements of the Australian community and fostering good community relations. There are measures in place to enhance communication and cooperation between the Government and the community to this end.

Refugees

26. Australia, along with other signatories to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, endorses the approach of the United Nations High Commissioner for Refugees to promote durable or long-term solutions for refugees.

27. The size of Australia's refugee and humanitarian entry programme is determined each year by the Australian Government. The programme for 1991/92 was 12,000 places. For 1992/93, the planning figure was initially set at 10,000 places but was subsequently increased to 12,000 places in response to increased humanitarian demands and the United Nations High Commissioner for Refugees' revised assessment of resettlement needs for 1993.

28. The refugee and humanitarian programme has recently been separated from the migration programme to ensure that international and humanitarian considerations can be balanced against domestic economic and social considerations which guide the setting of the migration programme.

29. In 1991/92, 7,157 persons arrived in Australia under refugee and humanitarian programmes, 3,999 men and 3,158 women. The majority of arrivals were from South-East Asia and the Middle East. There were also significant numbers from Central America and South Asia. Principal source countries were El Salvador [1,096], Iraq [1,069] and Viet Nam [1,044]. The following table shows the refugees' place of origin:

Region of birth of total humanitarian arrivals
Financial year 1991/92

Region/Country of birth	Number	% Total
Oceania	1	0.0
Europe and the former USSR	548	7.7
Middle East and North Africa	1 898	26.5
South-East Asia	2 000	27.9
North-East Asia	92	1.3
Southern Asia	1 044	14.6
Northern America	0	0.0
South and Central America and Caribbean	1 260	17.6
Africa (excl. North Africa)	311	4.3
Not stated	3	0.0
Total	7 157	100.0

Language

30. Australian English is the predominant language spoken in Australia. However, the Australian Language and Literacy Policy released in August 1991 recognizes that Australia's cultural vitality is also a product of other languages spoken in the community. These include the indigenous languages of Aboriginal and Torres Strait Islander peoples as well as European and Asian languages.

31. According to the 1991 Census over 2½ million people, or about 17.4 per cent of those aged five years and over, spoke a language other than English at home. Italian ranked foremost with over 409,247 speakers, followed by Greek with 274,999 and then by Chinese languages, Vietnamese, German and Arabic/Lebanese each with more than 100,000 speakers. The following table provides a detailed breakdown:

People who speak a language other than English at home - excludes 0 to 4 years 1991				
Language	Men	Women	Total	% Population
Aboriginal languages	20 329	20 617	40 946	0.3
Arabic including Lebanese	76 413	70 965	147 378	0.9
Chinese languages*	126 244	124 985	251 229	1.6
Croatian	31 414	29 375	60 789	0.4
Dutch	22 294	25 300	47 594	0.3
French	22 149	23 533	45 682	0.3
German	56 423	58 941	115 364	0.7
Greek	139 079	135 920	274 999	1.8
Italian	207 205	202 042	409 247	2.6
Macedonian	31 392	30 015	61 407	0.4
Maltese	26 383	25 588	51 971	0.3
Polish	30 675	34 027	64 702	0.4
Serbian	11 964	11 172	23 136	0.1
Spanish	42 436	43 850	86 286	0.6
Turkish	19 561	18 440	38 001	0.2
Vietnamese	54 022	48 040	102 062	0.7
Yugoslav (not explicitly identified)**	21 573	20 745	42 318	0.3
Other***	229 672	246 048	475 720	3.1
Not stated	189 156	182 149	371 305	2.4
Total				17.4

* Comprises Cantonese Mandarin, Chinese as stated and Chinese languages (not explicitly identified).
** Comprises Yugoslav (not explicitly identified) and Serbo-Croatian.
*** Includes other language indicated but not stated and inadequately described.

Literacy

32. Adult English literacy needs in Australia were identified in a national survey which was conducted in 1989. From that survey it can be estimated that at least 10 per cent of adults are unable to perform everyday reading and writing tasks in English. Of these about 650,000 were of English-speaking background. In 1989 it was estimated that 44,000 people were enrolled in adult literacy programmes.

33. The Australian Language and Literacy Policy released in August 1991 sets out more than $333 million in measures and new directions to address these critical shortcomings in Australia's competence in English and other languages. The four key goals of the policy are that:

- All Australians should develop and maintain effective literacy in English to enable them to participate in Australian society;

- The learning of languages other than English must be substantially expanded and improved;

- Those Aboriginal and Torres Strait Islander languages which are still transmitted should be maintained and developed, and those that are not should be recorded where appropriate; and

- Language services provided by interpreters and translators, the print and electronic media and libraries should be expanded and improved.

34. The new policy includes such measures as using television to deliver adult literacy services, special grants to schools for senior students studying priority languages other than English, development of a national English curriculum statement and arrangements for school literacy proficiency assessment, more funding and support for adult literacy, a boost in English as a second language school programmes, new language and literacy advisory bodies and increased support for English for adult migrants.

35. The Aboriginal and Torres Strait Islander Languages Initiatives Program supports community-based Aboriginal and Torres Strait Islander language maintenance, development, research and retrieval.

Religion

36. Details on religious affiliation have been collected in all Australian censuses. However, since the 1933 Census, it has been clearly stated on the census form that answering the question on religion is not obligatory. By 1991, 23 per cent of the population described themselves as either having "no religion" or did not answer the question.

37. One thousand nine hundred and ninety one Census data show that the Australian population is predominantly Christian with the majority associating themselves with the two major groups, the Catholic Church (27.3 per cent) and the Anglican Church of Australia (23.9 per cent).

38. There has been a slight increase in the proportion of persons of non-Christian religions since 1981, from 1.4 per cent to 2.6 per cent in 1991. The following table shows the religious affiliations of the population:

Religious affiliation - Census 1991				
	Men	Women	People	% Population
Christian				
Anglican	1 935 173	2 083 597	4 018 770	23.9
Baptist	132 732	147 188	279 920	1.7
Catholic	2 252 114	2 354 530	4 606 644	27.3
Churches of Christ*	35 014	43 025	78 039	0.5
Jehovahs Witness	33 468	41 083	74 551	0.4
Lutheran	122 144	128 700	250 844	1.5
Orthodox	242 957	231 964	474 921	2.8
Pentecostal	70 421	80 244	150 665	0.9
Presbyterian**	357 480	374 747	732 227	4.3
Salvation Army	32 236	39 748	71 984	0.4
Uniting Church	640 644	747 002	1 387 646	8.2
Other	160 568	178 865	339 433	2.0
Total	6 014 951	6 450 693	12 465 644	74.0
Non-Christian				
Buddhist	69 775	70 072	139 847	0.8
Islam	77 958	69 549	147 507	0.9
Judaism	36 099	38 287	74 386	0.4
Other	42 966	40 546	83 512	0.5
Total	226 798	218 454	445 252	2.6
Inadequately described	26 736	23 117	49 853	0.3
No religion***	1 209 830	966 778	2 176 608	12.9
Not stated	883 852	828 470	1 712 322	10.2
Total	8 362 167	8 487 512	16 849 679	100.0

* Comprises Churches of Christ and Churches of Christ Non-denominational.
** Comprises Presbyterian so described and Reformed.
*** Includes Humanist/Materialist.

Health

39. In comparison with other countries, Australia ranks amongst those with the lowest mortality levels and the highest expectations of life. The current trend is towards a levelling of the crude death rate following two decades of consistent falls. The decline in death rates is a result of continuing improvements to community health care, public awareness of health issues and advances in medical science and technology.

40. In Australia, as in most other countries, females have lower death rates than males (see table). Age specific rates show this discrepancy occurring across all age groups. The overall effect of this difference in death rate has been to increase the proportion of females in the older age groups of the population. Because of their greater longevity, women are more likely to be widowed, to live alone or to live in a residential care setting in old age.

41. The three most prevalent causes of death at the present time are ischaemic heart disease, cancer and cerebrovascular disease or stroke.

42. The life expectancy at birth remains much lower for Aboriginal and Torres Strait Islander people than for the total Australian population. From the available data, the overall expectation of life at birth is 55.2 years for males and 63.6 years for females.

Life expectancy at birth		
	Males	Females
1986	72.74	79.20
1987	73.01	79.43
1988	73.05	79.40
1989	73.26	79.49
1990	73.81	79.94
1991	74.35	80.29

43. In 1988, the total fertility rate reached its lowest point of 1.84 live births per 1,000 population (see table). Since then it has been rising and in 1990 the total fertility rate was 1.90. However, it declined again in 1991 to 1.85.

Fertility rate	
1986	1.87
1987	1.85
1988	1.84
1989	1.84
1990	1.90
1991	1.85

44. The overall level of child bearing amongst Aboriginal and Torres Strait Islander women is significantly higher than among other Australian women. The difference is apparent among women of all ages, but is particularly high between the ages of 15-19 and 20-24 years where the fertility rates of Aboriginal and Torres Strait Islander women are three times that for all Australian women of the same age.

45. As shown in the table, Australia's infant mortality rate per 1,000 live births in 1991 was 7.1 overall - 7.9 for males and 6.3 for females. The difference between the male and female mortality rates has narrowed appreciably, but the ratio of th rates has remained remarkably constant at around 1.3. For children aged under one year it was 7.6 for males and 5.9 for females. For children aged 1-4 years it was 0.4 for males and 0.3 for females.

Infant mortality rates (per 1,000 live births)	
1986	8.8
1987	8.7
1988	8.7
1989	8.0
1990	8.2
1991	7.1

46. Internationally the Australian infant mortality rate is among the lowest, being comparable with rates for the United Kingdom and Norway, and lower than those for New Zealand, Italy, Spain and the United States. The Australian rate is higher than rates in Japan, Iceland, Sweden, the Netherlands and Canada.

47. For Aboriginal and Torres Strait Islander children, however, the 1990 infant mortality rate was 22.5. Rates for children aged 0-4 years in 1984-89 were 6.5 for males and 5.4 for females.

48. Australia's maternal mortality rate during 1988-1990 was 5.4 per 100,000. The maternal mortality rate for Aboriginal and Torres Strait Islander women of 28 per 100,000 is considerably higher than that of the general population. Strategies to decrease maternal mortality amongst Aboriginal and Torres Strait Islander women have been identified in the National Aboriginal Health Strategy, the National Women's Health Program, the Alternative Birthing Strategy and Australia's National Program of Action pursuant to the World Declaration for the Survival, Protection and Development of Children. The following table gives numbers of childbirth-related deaths:

Deaths caused by complications of pregnancy, childbirth and the puerperium	
1986	15
1987	13
1988	12
1989	13
1990	16
1991	13

49. For 200 years Australia has had a relatively youthful age structure, caused by high birth rates and high levels of immigration. Recently, however, the trend has mirrored other western countries which, without Australia's relatively high levels of immigration, have been experiencing declining birthrates and greater life expectancy.

50. The proportion of the population aged between 0-19 was estimated at almost 29.4 per cent in 1992, a fall from 31.5 per cent in 1986. In these age groups males outnumber females by a ratio of 95.3 females to 100 males. The proportion of the population aged 65 or more increased from 10.6 per cent

in 1986 to 11.36 per cent in 1992. It is expected to reach 12 per cent by 1996. This represents a growth of 13.2 per cent in a decade. The median age increased from 31.1 in 1986 to 32.5 in 1991 (see table).

Percentage of population under 19 and over 65 years of age (estimated resident population)

Age group in years	Number of persons 1992			% of population		
	Males	Females	Total	Males	Females	Total
0 - 4	659 273	628 062	1 287 335	3.76	3.58	7.34
5 - 9	658 044	626 870	1 284 914	3.75	3.58	7.33
10 - 14	643 019	612 083	1 255 102	3.67	3.49	7.16
15 - 19	679 716	649 404	1 329 120	3.88	3.70	7.58
65 - 69	325 322	351 209	676 531	1.86	2.00	3.86
70 - 74	239 133	291 978	531 111	1.36	1.67	3.03
75 - 79	161 764	227 982	389 746	0.92	1.30	2.22
80 - 84	88 140	149 681	237 821	0.50	0.85	1.36
85 and over	46 633	109 032	155 665	0.27	0.62	0.89

51. Women greatly outnumbered men in the older age cohorts, and the differential increases with age. Of the population aged 65 or more in June 1992, 1,129,882 were women. This represents some 56.8 per cent of the population aged 65 or more.

52. Over half of all Aboriginal and Torres Strait Islander people were under the age of 20 in 1986, compared with less than a third of all Australians. The difference in age structure was most pronounced in the youngest and oldest age groups. The proportion of Aboriginal and Torres Strait Islander people under 5 years of age was 14 per cent, almost double that of the total population. Only 6 per cent were over 54 years of age, compared to 20 per cent of the total population. This was due to the higher fertility rate and shorter life expectancy of Aboriginal and Torres Strait Islander people.

The economy

53. Australia ranks among the most developed countries in the world. Based on the latest available comparisons, for 1990, Australia's per capita income (Gross Domestic Product (GDP) per capita) is 13th highest among the 24 members of the Organisation for Economic Cooperation and Development (see table). GDP is the official measure of economic output used in Australia, and is equivalent to Gross National Product (GNP) less net overseas income. In Australia the value of GNP historically has been less than GDP, but not significantly so.

Gross Domestic Product per capita 1990
(selected nations, US$, average OECD prices, purchasing power parity basis)

United States	$21 449
Germany	$18 291
Japan	$17 634
France	$17 431
Australia	**$15 951**
Norway	$15 921
Netherlands	$15 766
United Kingdom	$15 720
New Zealand	$13 258
Ireland	$10 659

54. The structure of the Australian economy is similar to most other developed countries. The services sector has grown in sophistication and size to become the largest contributor to national output. The contribution of the manufacturing sector to national output remains significant, with an increasing focus on exports. At the same time, agriculture and mining play a larger role in the Australian economy than is the case for most other developed nations, reflecting natural endowments of arable land and extensive mineral resources. The development of new mines (primarily iron ore) in the late 1960s significantly added to the importance of the mining sector to the Australian economy. The following table shows GDP by industry:

Gross domestic product by industry - financial year 1991/92
(% share of total)

Agriculture	4
Mining	5
Manufacturing	15
Construction	7
Services	69

55. The Australian economy is heavily dependent on international trade. Exports of goods and services accounted for around 20 per cent of GDP in the financial year 1991/92. As a nation rich in primary resources, commodities are a major source of export income. However, the 1980s saw a greater diversification in Australia's export base, with strong export growth in manufactures and services, especially tourism.

56. The direction of Australian trade has shifted increasingly towards the Asian region, reflecting its rapid growth and industrialization and

Australia's increasing orientation to the region. The share of Australian exports going to Asia rose from 45 per cent in 1979/80 to 57 per cent in 1991/92.

57. The following table shows GDP growth since 1961:

Gross Domestic Product
(average annual % growth, 1989/90 prices)

1961 to 1965	4.9
1966 to 1970	5.6
1971 to 1975	3.7
1976 to 1980	3.1
1981 to 1985	3.2
1986 to 1990	3.0

58. The 1950s and 1960s marked an era of rapid expansion for the Australian economy, assisted by high rates of immigration, a growing manufacturing sector, generally strong demand for staple exports such as wool and wheat and, towards the end of the period, high rates of mineral export growth.

59. As was the case for most industrial countries, the difficult adjustments to the oil price shocks of the 1970s resulted in a significant slowing in economic growth.

60. The 1980s opened with stronger growth, assisted by a marked expansion in the resources sector associated with expectations of sustained higher world energy prices. This expectation failed to materialize, which, together with a build-up in wage pressures, a serious drought and an international slowdown, led to a recession in 1982/83. Following this recession, the Australian economy grew strongly for a sustained period and, over the 1980s as a whole, Australia's economic growth was the fifth highest of the OECD nations.

61. From mid-1983 onwards, a Prices and Incomes Accord between the Federal Government and the trade union movement assisted Australia's economic performance by providing an equitable framework for wage restraint and by re-establishing a sound profit share. Toward the end of the 1980s, a high level of corporate profitability and strong economic growth were associated with record levels of business investment.

62. Corresponding to the trends in economic growth, growth in GDP per capita was relatively high in the 1960s and slowed significantly in the 1970s (see table). The strong rates of economic growth achieved during the 1980s were associated with continued moderate growth in GDP per capita.

Gross Domestic Product per capita
(average annual % growth, 1984-85 prices)

1961 to 1965	2.7
1966 to 1970	3.2
1971 to 1975	1.9
1976 to 1980	1.7
1981 to 1985	1.7
1986 to 1990	*1.7

* 1989-90 prices.

63. Per capita GDP fell in 1990 and 1991 (see table). The economic downturn from the high rates recorded in the late 1980s was exacerbated by a decline in the terms of trade (reflecting poor international economic conditions), a severe drought and a fall in asset prices, which exposed over-investment in some key areas of the economy, such as office-building construction. Since mid-1991, there has been a moderate recovery. Reflecting the subdued world economic outlook, the recovery is forecast to remain modest by historical standards.

1991 recession and recovery
(year average % growth 1989-90 prices)

Year	Total GDP	GDP per capita
1989	4.7	3.2
1990	1.1	-0.4
1991	-1.1	-2.3
1992	2.0	0.4

64. As shown in the table, the strong growth in the economy in the 1960s was associated with generally low inflation. In the 1970s, Australia's inflation rate rose significantly, as was the case for most other industrial countries. Inflation stayed high through the 1980s, rising to above 10 per cent in the early part of the decade due to strong wages growth before declining following the introduction of the Prices and Incomes Accord.

Inflation
(Year to December % growth, based on Consumer Price Index)

Decade	Average annual rate
1960s	2.5
1970s	10.1
1980s	8.6
Calendar year	**Annual rate**
1989	7.8
1990	6.9
1991	1.5
1992	0.3

65. In the early 1990s, Australia made a break from its high inflation past. By December 1992, the annual inflation rate had fallen to 0.3 per cent, the lowest recorded since 1964. This reflected a range of factors, including ongoing wage restraint, the effects of the recession on domestic demand and reductions in mortgage interest rates. After being generally above the OECD average inflation rate over the past 20 years, Australia is now producing a better inflation performance than most other industrial countries. Importantly, the decline in inflation has been accompanied by a marked fall in inflationary expectations to historic lows, providing a basis for maintaining low inflation in the economy.

66. The high rates of economic growth in the 1960s resulted in high rates of employment growth and a low level of unemployment. Much lower employment growth and a rise in unemployment were experienced during the 1970s, as Australia's economic growth slowed and real unit labour costs increased. In the second half of the 1980s, under the influence of the Prices and Incomes Accord, employment, in particular part-time employment, grew strongly. A major feature of this period was a sharp increase in the proportion of the adult female population either in or seeking employment. This meant that even though employment increased strongly, unemployment fell more slowly to a low of around 5.9 per cent in 1989.

67. More recently, the recession of the early 1990s was associated with a decline in employment and an increase in the unemployment rate to 11%. Female employment did not fall as significantly as male employment, reflecting further growth in part-time employment opportunities and declines in some male dominated sectors, such as manufacturing and construction. As a result, the female unemployment rate is below the male unemployment rate for the first time (see table).

Average annual employment growth
Average annual unemployment rate
(year average basis)

	Employment			Unemployment		
	Male	Female	Total	Male	Female	Total
1966 to 1970	1.8	4.7	2.7	1.2	3.1	1.8
1971 to 1975	1.0	3.2	1.7	2.1	3.1	1.8
1976 to 1980	1.3	2.0	1.5	4.8	7.6	5.8
1981 to 1985	0.6	2.8	1.5	7.5	7.9	7.3
1986 to 1990	1.9	4.2	2.9	6.9	7.9	7.3
Calendar years						
1989	3.5	5.9	4.8	5.7	6.9	6.2
1990	0.9	3.3	1.6	6.7	7.2	6.9
1991	-2.8	-0.9	-1.8	9.9	9.2	9.6
1992	-0.8	0.6	-0.3	11.4	10.0	10.8

68. The Aboriginal Employment Development Policy was established in response to the finding of the Miller Report (1985) which identified major inequities in Aboriginal and Torres Strait Islander employment and education outcomes compared to those of the general population. The Training for Aboriginals Programme (TAP) is directed at individuals through the Commonwealth Employment Service and through the development of major employment strategies with private and public sector agencies. TAP is designed to create equitable outcomes in terms of the geographic distribution and the status of Aboriginal and Torres Strait Islander employment and to ensure that Aboriginal and Torres Strait Islander employment covers the range of occupations. The Training for Aboriginals Programme allocation was $45.785 million for 1992/93.

69. Australia has traditionally been a net importer of capital, facilitating the development of a rich endowment of natural resources at a faster pace than would have been possible if domestic savings were the only source of investment funds. Australia, therefore, has traditionally run a current account deficit (CAD), reflecting the use of a net inflow of capital to fund investment.

Current account deficit (CAD) and net external debt (current prices)

		CAD as % of GDP	Net foreign debt as % of GDP	
Decades				
1960s		2.9	Data not available	
1970s		1.8	*5.2	
1980s		4.7	23.6	
Calendar years	CAD ($A billion)	% of GDP	Net foreign debt ($A billion)	% of GDP
1990	19.2	5.1	136.6	36.2
1991	13.0	3.4	145.0	38.1
1992	14.2	3.6	168.2	42.8

* Data available for the period 1976/77 to 1979/80.

70. During the 1960s and 1970s the merchandise trade account was generally in surplus, while net services, net income and net unrequited transfers were in deficit. However, this pattern was altered in the 1980s, when declines in the terms of trade and strong domestic demand meant that the CAD did not fall below 3.4 per cent of GDP. Apart from small surpluses in 1983/84 and 1987/88, the balance on merchandise trade was in deficit, and as a result of the growing cost of servicing the related build-up in external liabilities, the net income deficit increased.

71. The net external debt to GDP ratio increased significantly during the 1980s, reflecting a marked increase in the size of the current account deficit and with more of it financed through borrowings rather than equity.

72. The CAD has fallen in recent years from 6 per cent of GDP in 1989-90 to around 3 per cent in 1991/92 and the surplus on the balance of goods and services in 1991/92 was the first since 1979/80.

73. Economic policy has faced a number of challenges over the last two decades. The 1970s witnessed the oil price shocks and a rise in unemployment and inflation. In the 1980s, there were sharp swings in the terms of trade and the exchange rate, rising external debt and, in more recent times, a recession following the asset price boom in the late 1980s.

74. Reflecting the experiences of the past two decades, it is recognized that sustained improvements in living standards require economic policy to be largely set in a medium-term context, with appropriate consideration for the relative strengths of the different arms of policy. Fiscal policy has been targeted to achieve a better balance between domestic demand and production, particularly through its contribution to raising national savings, while still providing a short-term stimulus to assist the recovery. Monetary policy is

focused on reducing inflation and inflationary expectations. Wages policy is aimed at restraining aggregate wages, while increasing labour market flexibility.

75. A framework has been established for the transition to an enterprise-based wage-setting system that will enable the needs and demands of a competitive trading environment to play a greater role in wage determination. Greater scope for real wage flexibility will improve the allocation of labour resources across and within industry, improving productivity and industry competitiveness.

76. Microeconomic reform, aimed at increasing the productivity and competitiveness of Australian industry, has been a key part of policy since the mid-1980s. There have been major reforms in the financial sector; in public utilities such as transportation, communications and electricity, an overhaul of the taxation system to make it more internationally competitive and less distortionary domestically and significant reductions in industry protection in the form of quotas and tariffs. Concerted efforts are also being made to introduce greater uniformity in standards and regulations across Australia.

II. GENERAL POLITICAL STRUCTURE

A. Summary

77. Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the various Federal institutions and the six States - New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania - and two internal self-governing Territories. In each of these political units there is a parliament elected by the people, an executive, responsible to that parliament, formed by the majority party or parties in parliament, and an independent judiciary.

78. In addition to the States, there are 10 Australian Territories. The Australian Capital Territory and the Northern Territory, which are both internal Territories, are self-governing and may be regarded, for the purposes of this report, as standing in substantially the same position as a State of Australia. A third territory - Norfolk Island - has limited legislative and executive government to enable it to run its own affairs to the greatest practicable extent.

79. The Australian Constitution is principally concerned with the establishment of the Federal organs of government and with the distribution of constitutional power between the Federal and State Governments.

80. The Constitution also provides for the establishment and distribution of power between the three organs of government, the legislature, the executive and the judiciary, and that these organs shall be separate and distinct from each other.

81. Under the Australian Constitution the legislative power of the Commonwealth of Australia is vested in the Parliament of the Commonwealth,

which consists of the Queen, the Senate and the House of Representatives. The Queen is represented throughout the Commonwealth of Australia by the Governor-General.

82. Following a general election in the federal sphere, the Governor-General commissions a member of the Parliament to be Prime Minister. The person chosen is the leader of the party, or one of a coalition of parties, which obtained a majority of seats in the House of Representatives or the person who is able to obtain the general support or "confidence" of a majority of that House. Other Ministers of the Government are appointed by the Governor-General on the recommendation of the Prime Minister from among the members of Parliament.

83. In Australia, the law consists of:

(a) Acts passed by the Federal Parliament acting within the scope of its powers under the Australian Constitution, together with delegated or subordinate legislation made under such Acts;

(b) Ordinances made in respect of the Australian Capital Territory, the Northern Territory, Norfolk Island and the other territories, together with delegated or subordinate legislation made under such Ordinances;

(c) Acts passed by State parliaments and the Legislative Assemblies of the Northern Territory, the Australian Capital Territory and Norfolk Island, together with delegated or subordinate legislation made under such Acts.

(d) So much of the common or statute law of England that was received and still applies to Australia and remains unrepealed; and

(e) The Australian common law, which developed from the English common law and is interpreted and enunciated by the Courts.

84. In Australia each of the Federal and State systems incorporates the three arms of government; legislative, executive and judicial. Thus, there are separate systems of courts in the Federal and State spheres and the Constitution recognizes both State judicial power and Federal judicial power. The High Court of Australia, however, is the final court of appeal in respect of all matters, whether decided in Federal or State jurisdictions.

B. The Australian Federal System

1. History of the Australian Federation

85. Aboriginal and Torres Strait Islander people settled in Australia more than 40,000 years ago. There were up to 200 different language-speaking groups living throughout mainland Australia and most of the major islands off the coast including what is now the State of Tasmania.

86. In the sixteenth and seventeenth centuries the Spanish, the Portuguese and the Dutch explored the surrounding seas and the coastline of Australia. The English made their first appearance on the Australian coast in 1688. Formal "possession", on behalf of the British Crown, of the whole of the

eastern part of the Australian continent and Tasmania was taken on 7 February 1788. By the middle of 1829, the whole territory, now known as Australia, had been constituted a dependency of the United Kingdom.

87. Between 1788 and 1859 six separate colonies were established around Australia - New South Wales, Victoria, Tasmania, South Australia, Western Australia and Queensland. These colonies were quasi-sovereign bodies, equal in status and politically independent of each other, with their own representative parliaments.

88. Due to the size of the Australian continent and the circumstances surrounding the establishment of the various settlements, the initial tendency was toward individual evolution of the separate colonies. However, it was not long before the importance of the relationship between the colonies was clearly recognized. The need to provide for the defence of Australia, to abolish internal customs barriers and to have a common immigration policy were some of the issues which drove the movement to federation.

89. The Australian Federation was established under the *Commonwealth of Australia Constitution Act 1990*, an Act of the Parliament of the United Kingdom which became operative from 1 January 1901. Under its terms, the six previously separate colonies were united in "one indissoluble Federal Commonwealth under the Crown of the United Kingdom". The existence of the colonies, however, was preserved under the names of States and it was contemplated that the rights of the States would be security entrenched and the equality of the original States maintained.

90. The creation of the Commonwealth of Australia by the union of the six Australian colonies did not in itself establish Australia as an independent nation. Australia remained a part of the British Empire. The Constitution did, however, establish the basis for independence and evolution toward sovereignty in international law and the independence of the Federal Parliament proceeded rapidly as a result of the First World War, in which Australia and the other British Commonwealth countries played a prominent part.

91. The first major step toward self-government in foreign affairs occurred at the Peace Conference of 1919. Australia had separate representation equivalent to that of other non-major Powers, signed the Peace Treaty, became a member of the League of Nations, and was given mandated territories under the authority of the League.

92. An Imperial Conference of 1926 resulted in a declaration to the effect that the United Kingdom and her Dominions, including Australia, were autonomous communities within the British Empire, equal in status though united by a common allegiance to the Crown. It was further declared that the Governor-General was no longer a representative of the British Government and that the Australian Government and not the British Government was to advise the King on Dominion affairs.

93. During the period between the two world wars the powers of the British Government with respect to Australia were further rolled back and by the end of the Second World War Australia had achieved full independence as a sovereign nation State.

2. The Constitution

94. The Australian Constitution is principally concerned with the establishment of the Federal organs of government and with the distribution of constitutional power between the Federal and State Governments.

95. The initial provisions of the Constitution provide for the office of the Governor-General to represent the Queen throughout Australia. Chapters I and II establish the two Houses of Parliament and the executive government and define to some extent their powers and responsibilities. Chapter III establishes the federal judicature and Chapter IV relates to finance and trade. Detailed saving of the constitutions of the States, other matters relating to the States and Commonwealth/State relations are contained in Chapter V and Chapter VI allows for the establishment of new States. Chapter VIII contains provision for amending the Constitution by referendum.

96. The Constitution combines responsible democratic parliamentary government on the Westminster model - the system which had previously existed in the federating colonies - with a division of legislative power between the Federal Government and State Governments, the Federal Government being given a list of specific powers and the States retaining the undefined residue. It was intended at Federation to create a Federal Government with limited power and authority, leaving all residual power to the colonies in their newly created form of independent States.

97. Most of the heads of power enumerated in the Constitution are concurrent, that is, both the Federal Government and the State Governments may legislate on these subjects. If both the Federal Government and a State Government legislate on the same subject and the two pieces of legislation are inconsistent, then the State legislation will be invalid to the extent of the inconsistency and the Federal legislation will prevail. Where the Federal legislation covers the whole field on any subject matter any State legislation on the same subject matter will be invalid.

98. Among the more important matters which fall within the area of concurrent Federal and State power are interstate and overseas trade and commerce, taxation (other than duties of customs and excise), banking, insurance, bankruptcy, copyrights, patents, trade marks, marriage and divorce and certain social services such as invalid and age pensions, maternity and family allowances, child endowment, unemployment and sickness benefits and medical and dental services.

99. Certain matters are removed altogether from the legislative jurisdiction of the States and given exclusively to the Federal Government. These include the levying of customs and excise duties and, subject to some exceptions, the granting of bounties on the production or export of goods; the coinage and effectively the determination of what may be legal tender for payment of debts; and matters relating to those departments of the public service the

control of which was transferred to the Federal Government by the Constitution, for example, the post office, the defence departments and the departments dealing with quarantine matters.

100. No State may, without the consent of the Federal Government, maintain its own armed forces. The Royal Prerogative of declaring war and making peace is exercisable only on the advice of the Federal Government and only the Federal Government is recognized as being competent to negotiate and conclude treaties.

101. If a subject is not explicitly mentioned or necessarily implied in the Constitution, then the Federal Government has no express power to legislate on it. Such areas include education, employment, public health, housing and the general criminal law - except in the Territories or to the extent to which they may be connected with other Federal powers. It can nevertheless exercise considerable influence over those matters through the express powers which it has been given, including its financial powers and its power over "external affairs".

102. Under section 96 of the Constitution, for example, the Federal Government is given the power to grant financial assistance to the States on any terms and conditions it thinks fit. The Federal Government has wide powers to attach conditions to such a grant to determine the purposes to which the grant may be applied, even though the specified purpose is outside the constitutional power of the Federal Government. As the finances of the States depend to a large extent on such grants, section 96 gives the Federal Government the ability to influence State policy in areas falling within State residual power.

103. Section 51 (xxix) gives the Federal Government the power to make laws with respect to external affairs. The High Court has held that section 51 (xxix) grants the power to make laws to implement obligations arising under a treaty to which Australia is a party and this may include laws with respect to subject matter which does not otherwise fall within the power of the Federal Government. The High Court has also suggested that a matter of international concern could, in the absence of a treaty, be the object of legislation under section 51 (xxix).

104. It is also possible under section 51 of the Constitution for the Federal Parliament to make laws on a matter referred to it by a State. Such a law would only extend to the State which referred the matter to the Federal Parliament or to a State which afterwards adopts the law.

105. The Constitution also provides for the establishment and distribution of power between the three organs of government, the legislature, the executive and the judiciary and that these organs shall be separate and distinct from each other.

106. The Constitution provides in section 128 for the amendment of its own provisions. The method adopted, however, has resulted in changes to the Constitution being very difficult to achieve. A proposed amendment must first be passed by an absolute majority in both Houses of Parliament. The proposal must then be put to the people of Australia in a referendum for a straight

"Yes" or "No" vote. The amendment will only be passed if it receives an affirmative vote in the referendum from the majority of Australian people and majorities in at least four out of six of the States.

107. There have been 42 referendums seeking sanction to amend the Constitution since 1901. All but eight of the proposals were rejected.

108. One of the eight proposals for constitutional change which was accepted went to referendum in 1967. This was a very significant landmark for Aboriginal and Torres Strait Islander people and involved amending section 51 of the Constitution and repealing section 127. The effect of these changes was to give the Commonwealth Government the power to make laws for Aboriginal and Torres Strait Islander people in the States, concurrently with State Governments and to enable Aboriginal people to be counted in reckoning Australia's population.

3. Federal Government

109. Under the Australian Constitution the legislative power of the Commonwealth of Australia is vested in the Parliament of the Commonwealth, which consists of the Queen, the Senate and the House of Representatives. The Queen is represented throughout the Commonwealth of Australia by the Governor-General.

110. The Upper House is known as the Senate and has 76 members. The Senate was intended to represent the interests of the people of the States as part of a federal system. Membership of the Senate is not determined by population or by size of territory. The less populated States and the States smaller in size have as many members, currently 12, as the more populated or larger States. All States have equal standing and an equal voice. Section 7 of the Constitution provides that senators for each State are directly chosen by the people of the State voting as one electorate. Since December 1975 four territorial senators represent the two self-governing territories, the Australian Capital Territory and the Northern Territory, in the Senate.

111. The Lower House is known as the House of Representatives. The House of Representatives has 147 members elected on a popular basis from single member electorates so that the number of members chosen to represent each State is in proportion to its population.

112. In general, legislation must be passed by both houses before being presented to the Governor-General for assent and becoming law.

113. Australia has an electoral system based upon the democratic principles of universal adult suffrage and the right of electors to have their votes accorded the same value as the votes of other electors. The qualifications for enrolment to vote are identical for both Houses. A person who is 17 years of age or older and an Australian citizen and has lived at his or her present address for at least a month is eligible to enrol to vote. If a person is 18 years of age and eligible it is compulsory to enrol and to vote. British

subjects who are not Australian citizens are eligible to enrol to vote if they were on the Federal electoral roll on 25 January 1984. The qualifications for enrolment to vote in State elections are similar.

114. The following people are not eligible to enrol to vote:

(a) People of unsound mind who are incapable of understanding the nature and significance of enrolment and voting;

(b) People who have been convicted and are under sentence for an offence punishable by imprisonment for five years or longer; and

(c) People who have been convicted of treason and not pardoned.

115. The Constitution also recognizes a system of responsible government under which the Ministers of the Crown sit in and are directly responsible both individually, for their respective departments, and collectively to Parliament and can retain office only while they have the "confidence" of the Lower House. Hence there is a fairly direct line of accountability from the people who elect the members of Parliament to the executive which holds office subject to the confidence of the popular House of Parliament.

116. Following a general election in the federal sphere, the Governor-General commissions a member of the Parliament to be Prime Minister. The person chosen is the leader of the party, or one of a coalition of parties, which obtained a majority of seats in the House of Representatives or the person who is able to obtain the general support or "confidence" of a majority of that House. Other Ministers of the Government are appointed by the Governor-General on the recommendation of the Prime Minister from among the members of Parliament.

117. In the Commonwealth of Australia, the head of State is, and always has been, the person who, for the time being, is also the King or Queen of the United Kingdom though since 1953 that person has been separately styled and titled Queen of Australia. The Constitution does not refer to the Queen as the head of State. It is nevertheless proper to regard her as head of State because of the role in government the Constitution assigns her. Section 61 of the Constitution vests the executive power in the Queen and declares that it is exercisable by the Governor-General as the Queen's representative.

118. The Governor-General exercises the executive power of the Commonwealth of Australia, and certain other powers and functions conferred by the Constitution that include, among others:

(a) The power to appoint times for holding the sessions of the Parliament;

(b) To prorogue Parliament, and to dissolve the House of Representatives;

(c) To cause writs to be issued for general elections of members of the House of Representatives;

(d) To assent in Queen's name to a proposed law passed by both Houses of Parliament

(e) To choose and summon Executive Councillors, who hold office during the Governor-General's pleasure; and

(f) To appoint Ministers of State for the Commonwealth of Australia.

In addition, the Governor-General, as the Queen's representative, is Commander-in-Chief of the Defence Forces.

119. The Constitution provides for the appointment of the Governor-General by the Queen, although in practice the Governor-General is appointed on the recommendation of the Prime Minister.

120. Many Acts of the Federal Parliament provide that the Governor-General may make regulations to give effect to the Acts. The Governor-General may also be authorized by statute to issue proclamations, for example, to declare an Act in force. The Governor-General has also been given power by statute to legislate for certain of the Australian Territories.

121. In theory the powers of the Governor-General are extensive. In practice, however, under the provisions of the Constitution, as well as by the conventions of responsible government in British Commonwealth countries, the Governor-General's executive functions are exercised almost exclusively on the advice of Ministers of State and it is the Government that accepts the political responsibility for those acts. In exercising statutory powers and functions, and many Constitutional powers and functions, the Governor-General acts on the advice of the Federal Executive Council.

4. State government

122. There are six constituent Australian States and each of these political units has its own constitution, a parliament elected by the people, an executive, responsible to that parliament, formed by the majority party or parties in parliament, and an independent judiciary. Each State legislature has a general power to make laws for the peace, order and good government of the State although the wording of that general power varies slightly in some States. The extent of the legislative powers of each of these parliaments is defined by the Australian and State Constitutions.

123. The Commonwealth Constitution Act, while it had the effect of federating the colonies of the Australian continent, did not replace the pre-existing State constitutions. Section 106 of the Constitution provides that, subject to the Commonwealth Constitution, the constitution of each State shall continue in force as at the establishment of the Commonwealth unless altered in accordance with the constitution of the State.

124. The Queen is represented in each of the Australian States by a Governor. A Governor of a State has functions in relation to that State similar to the

functions conferred on the Governor-General in relation to the Federal Government. In the performance of his or her functions generally, particularly those conferred by statute, the Governor of a State acts on the advice of Ministers of State for the State.

5. Territorial government

125. In addition to the States, there are also a number of Australian territories. Australia has 10 territories in all. They are:

(a) Mainland territories:

- The Australian Capital Territory (which includes Canberra, the capital city of Australia and seat of the Federal Government);
- The Northern Territory; and
- The Jervis Bay Territory.

(b) External territories:

- The Australian Antarctic Territory;
- Norfolk Island;
- Cocos (Keeling) Islands; and
- Christmas Island.
- The uninhabited territories, which are all external to the mainland, are:
  - The Territory of Ashmore and Cartier Islands;
  - The Coral Sea Islands Territory; and
  - The Territory of Heard Island and McDonald Islands.

126. Under the Northern Territory (Self-Government Act 1978) and associated legislation, the Northern Territory has separate representative and administrative institutions and its own system of courts. The Northern Territory's Legislative Assembly has power to make laws for the peace, order and good government of the Territory. The Federal Government has specifically reserved to itself the power to legislate in the Northern Territory on matters of Aboriginal land and the mining of uranium and other prescribed substances.

127. Similarly, the Australian Capital Territory (Self-Government) Act 1988 established the Australian Capital Territory as a separate body politic, with its own Legislative Assembly and executive. The Legislative Assembly has power to make laws for the peace, order and good government of the Territory. The Territory is prevented from making laws on the classification of material

for censorship purposes, matters that are dealt with in the national corporations regulation scheme and acquiring property otherwise than on just terms.

128. Hereinafter, references, to the States include reference to the Australian Capital Territory and the Northern Territory unless otherwise indicated.

129. The external territory of Norfolk Island enjoys limited self-government.

130. The Federal Government retains the power to legislate for all the Territories and is responsible for the administration of the non-self governing territories.

C. The law in Australia - nature and composition

1. The judiciary

131. The independence of the judiciary and its separation from the legislative and executive arms of government is regarded as of great importance in Australia and it is taken for granted that judges in interpreting and applying the law act independently of the Government. In the case of federal judges, their security of tenure is guaranteed by the Constitution. In the States and Territories, legislation provides security of tenure for judges.

132. Federal judges are appointed by the Governor-General in Council, that is, on the advice of the Federal Government, and are subject to removal only on address of both Houses of Parliament on grounds of proved misbehaviour or incapacity. Their remuneration may not be diminished during their term of office. Under the legislation of most States, Supreme Court judges are removable by the Governor on an address from the House or Houses of Parliament without cause being shown. In the Territories the removal provisions are the same as those at the Federal level.

2. The court system

133. The judicial power of the Commonwealth of Australia is vested in the High Court of Australia, in the Federal courts created by the Federal Parliament and in the State courts invested by Parliament with Federal jurisdiction. The nature and extent of the judicial power of the Commonwealth is prescribed by Chapter III of the Australian Constitution.

134. The Privy Council, located in London, used to be the final court of appeal in the Australian court system. In 1968 a general right of appeal by leave was limited to matters of State jurisdiction. In 1975, that right was further limited by the abolition of appeals from the High Court so that, in matters of State jurisdiction, an unsuccessful party before a State Supreme Court had to choose between the High Court and the Privy Council in exercising his or her appeal rights.

135. It was generally recognized that that position was unsatisfactory and Federal/State discussions were commenced to resolve the constitutional difficulties which stood in the way of a complete abolition of Privy Council

appeals and other rules and procedures that were relics of the Imperial past. Those discussions led to the passage of the *Australia Act 1986* (following passage of requesting legislation in each State) and to complementary legislation of the United Kingdom Parliament. All residual constitutional links between Australia and the United Kingdom of Great Britain and Northern Ireland, including the avenue of appeal from State courts exercising State jurisdiction to the Privy Council, were abolished by the Australia Act. The Act does not, however, affect the position of the Queen in her capacity as Queen of Australia.

136. The Australian Constitution provides that the judicial power of the Commonwealth of Australia is to be vested in a "Federal Supreme Court, to be called the High Court of Australia". The Constitution requires that there shall be a Chief Justice and not less than two other Justices of the High Court. Today there are six other Justices. Originally, Justices were appointed for life. However, following an amendment to the Constitution in 1977, Justices appointed after that date retire at 70 years of age.

137. The Australian Constitution vests two types of jurisdiction in the High Court: original and appellate. Original jurisdiction is conferred in respect of:

(a) Matters arising directly under any treaty;

(b) Suits between States, or between persons suing or being sued on behalf of different States, or between a State and a person suing or being sued on behalf of another State;

(c) Matters in which the Commonwealth of Australia, or a person suing or being sued on behalf of the Commonwealth of Australia, is a party;

(d) Matters between States, or between residents of different States, or between a State and a resident of another State; and

(e) Matters in which a writ of mandamus or prohibition - which concern judicial review of administrative action - is sought against an officer of the Federal Government or of a Federal court. The High Court shares some of its jurisdiction under this section with the Federal Court of Australia.

In addition, the High Court is the Federal Court of Disputed Returns under section 354 of the *Commonwealth Electoral Act 1918*.

138. Section 73 of the Constitution confers appellate jurisdiction on the High Court to hear appeals from decisions of:

(a) The High Court in its original jurisdiction;

(b) Federal courts;

(c) Courts exercising federal jurisdiction; and

(d) State Supreme Courts.

139. In considering whether to grant an application for leave to appeal from a judgement, the High Court may have regard to any matters that it considers relevant, but it is required to have regard to whether the application before it:

(a) Involves a question of law that is of public importance, or upon which there are differences of opinion within, or among, different courts; or

(b) Should be considered by the High Court in the interests of the administration of justice.

140. The High Court is the final court of appeal in Australia.

141. The Federal Court of Australia was created by the *Federal Court of Australia Act 1976* and began to exercise its jurisdiction on 1 February 1977. It consists of an Industrial Division and a General Division. Matters arising under the *Industrial Relations Act 1988* are dealt with in the Industrial Division and all other matters are dealt with in the General Division. The Court sits as required in each State, in the Australian Capital Territory and the Northern Territory.

142. The Court has such original jurisdiction as is invested in it by laws made by the Federal Parliament, including, for example, in relation to matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Federal Government, in bankruptcy, corporations law, taxation and trade practices law. In addition, the Federal Court is a court of disputed returns in respect of elections under the *Aboriginal and Torres Strait Islander Commission Act 1989*.

143. The Federal Court of Australia has appellate jurisdiction in relation to the decisions of single judges of the Court, decisions of the respective Supreme Courts of the Australian Territories, except the Northern Territory, and certain decisions of State Supreme Courts when exercising federal jurisdiction.

144. The *Family Law Act 1975*, which commenced operation on 5 January 1976, introduced a new law dealing with the dissolution and nullity of marriage, custody and welfare of the children, maintenance and the settlement of property between the parties to a marriage in Australia. The Act created the Family Court of Australia as a specialist court dealing only with matrimonial and associated proceedings.

145. The main change made by the Act was that matrimonial conduct and fault are no longer taken into account as grounds for divorce. The Act provides that there is only one ground for divorce - that of irretrievable breakdown of a marriage - which ground is established if the husband and wife have lived separately and apart from each other (including separation under the same roof) for 12 months and there is no reasonable likelihood of their reconciliation.

146. The Family Law Act also deals with the guardianship, custody and access to and maintenance of ex-nuptial children and provides an extensive regime for the settling of disputes between divorced persons in respect of their property

and for maintenance of spouses where this is appropriate. Extensive child support legislation provides for the maintenance of children. The Child Support Agency, established in 1988 as part of the Australian Taxation Office, administers the Child Support Scheme, by which maintenance is assessed on the ability of both parents to pay, and payment of court-ordered maintenance enforced by allowing for deductions to be made directly from salaries and wages.

147. Under the Family Law Act, great emphasis is placed on the counselling services available through the Family Courts to persons involved in proceedings, as well as to any persons who have encountered marriage problems or difficulties relating to the resolution of custody and access questions. It is not, however, necessary to start proceedings to make use of these services.

148. Australian State and Territory courts have original jurisdiction in all matters brought under State or Territory laws, and in matters arising under Federal laws, where jurisdiction has been conferred on the courts by the Federal Parliament. Most criminal matters, whether arising under Federal, State or Territory law, are dealt with by State or Territory courts.

149. Each State and inhabited Territory, except the Australian Antarctic Territory and the Jervis Bay Territory, has its own independent system of courts consisting of a Supreme Court, in most jurisdictions an intermediate court - generally known as the district or county court - and local courts of summary jurisdiction. The Supreme Courts are the highest State and Territory courts and deal with the most important civil litigation and the most serious criminal cases. They also exercise appellate jurisdiction from the lower State courts and a Full Court of a Supreme Court can hear appeals from a decision of the Supreme Court when constituted by a single judge. The intermediate courts, which are presided over by a single judge, decide the great majority of serious criminal offences where a jury is required to decide the facts of a case. They also deal with civil litigation up to certain monetary limits.

150. The courts of summary jurisdiction are presided over by a magistrate and deal with matters summarily, that is, without a jury. They deal with most of the ordinary (summary) offences, such as traffic infringements, minor assaults and street offences. Magistrates also conduct committal proceedings in respect of the more serious offences to determine whether there is a prima facie case to be determined by a judge and jury, either in an intermediate court or a Supreme Court. In most jurisdictions, these courts also deal with civil litigation for debt recovery, smaller claims by one citizen against another or against a company, as well as some maintenance, custody and property disputes under jurisdiction conferred by the Federal Family Law Act.

151. Small claims courts and tribunals have been established in all States and Territories to enable minor legal disputes to be dealt with quickly, cheaply and informally. Procedures have been simplified in these courts and tribunals to facilitate small claims. In some jurisdictions legal representation is permitted, in others it is only permitted by agreement of the parties. There

are also limitations on the recovery of costs. The maximum jurisdiction of small claims courts varies from $2,000 in Tasmania and Western Australia to $5,000 in the Australian Capital Territory.

Law reform

152. Reform of the law is undertaken principally through the Federal Parliament and State Parliaments, acting in some instances on recommendations made by the Attorneys-General, State or Australian Law Reform Commissions, and by State Supreme Courts or Federal Courts.

153. The Australian Law Reform Commission commenced operations in 1975 to report on the review, simplification and modernization of those laws concerning matters assigned by the Australian Constitution to the jurisdiction of the Federal Parliament, and to consider proposals for the uniformity of laws of the Australian States and Territories.

154. Under its statute, the Australian Law Reform Commission must ensure in its work that Australian laws and law reform proposals do not trespass unduly on personal rights and liberties, do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions and are consistent with the International Covenant on Civil and Political Rights.

Legal aid

155. The objective of the Federal Government with respect to legal aid is to ensure that, in cooperation with the States and Territories, reasonable access to justice is provided for those in need and those in special circumstances. The Office of Legal Aid and Family Services, which forms part of the Federal Attorney-General's Department, is responsible for coordination of the delivery and development of national legal aid policies and programmes. This is done in cooperation and consultation with the various legal aid commissions.

156. The legal aid scheme relies on the cooperation and contribution of a number of key participants. These include the Federal Government, State and Territory governments, legal aid commissions, community legal centres and the private legal profession.

157. Under current arrangements, legal aid is provided through the independent legal aid commission in each State and Territory and through various community legal centres. In accordance with the Government's policy of self-management by Aboriginal and Torres Strait Islander people, legal aid is also provided by Aboriginal Legal Services which operate throughout Australia (see below).

158. The Federal Government provides over half of the funding for legal aid with the rest being made up from State/Territory grants, interest on solicitors' trust and statutory interest accounts, interest on investments, client contributions and recovered costs. These funds are spent on the provision of legal advice, duty lawyer services and legal assistance in criminal, civil and family law proceedings. Legal aid services are provided directly by salaried lawyers or by way of referrals to the private legal

profession. Assistance is directed to those persons who are most in need on the basis of merit and means tests. In some States, a merit test is not applied in respect of indictable criminal matters.

159. The Federal Government also provides financial legal assistance through various other statutory and non-statutory schemes for example, to applicants under the Child Support Scheme. There are 21 schemes in Federal legislation and 6 non-statutory schemes where the Attorney-General is empowered to authorize financial assistance. The statutory schemes include provision for assistance under the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *War Crimes Act 1945*. The non-statutory schemes under which financial assistance may be provided include public interest and test cases, overseas special circumstances cases, overseas custody (child removal) cases and Royal Commissions and inquiries.

160. The High Court of Australia recently considered the question of the right of an indigent accused to legal representation in a case in which legal aid had been refused [Dietrich v R (1992) 109 Australian Law Reports 385]. The majority concluded that where a trial judge is faced with an application for adjournment or stay by a person charged with a serious offence, who, through no fault on his or her part, is unable to obtain legal representation, then in the absence of exceptional circumstances the trial should be adjourned, postponed or stayed until representation is available. If a trial proceeds in those circumstances without representation, the resulting trial will not be a fair one and any conviction will be quashed. All members of the High Court agreed, however, that there was no right to be provided with counsel at public expense in serious trials.

Aboriginal Legal Services

161. There are 22 Aboriginal Legal Services throughout Australia, all of which are funded by the Federal Government through the Aboriginal and Torres Strait Islander Commission. All the services are independently run organizations with an elected board of directors which determine what cases the individual service will accept or decline. Aboriginal Legal Services were created to provide a legal service to Aboriginal and Torres Strait Islander people and their families in recognition of their disadvantaged position, both culturally and economically, within the overall community. The first service of this kind was established in the early 1970s.

3. The police

162. The principal duties of the police are the prevention and detection of crime, the protection of life and property, and the enforcement of law to maintain peace and good order. In addition, they may perform a variety of other duties including the regulation of street traffic, accident investigation and a variety of emergency services.

163. With the exception of the Australian Federal Police, police forces in Australia are under the control of the respective State and Northern Territory governments. Subject to Australia's international obligations, those governments have general responsibility for the establishment and implementation of police regulations, procedures and practices including those

relating to arrests, detaining suspects, interview processes and special provisions for juveniles and other minority groups. Crime control in Australia relies heavily on State and Territory police.

164. The Australian Federal Police is responsible for enforcing Federal law, assisting in policing of Federal territories and United Nations peace-keeping duties. A large proportion of the Australian Federal Police activities is in the areas of drug trafficking and so-called "victimless" crime such as fraud on the Commonwealth of Australia.

165. Police aim to improve the quality of life in the community by providing a wide range of services relating to crime control and the management of disorder. The concept of community policing is consistent with a wide interpretation of the police role. At the same time, police retain the capacity to respond in force, or with specialized units, when required to deal with a major crime or threat to the peace.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Summary

166. The Australian Constitution does not expressly confer on the Federal Parliament any specific or general power to legislate concerning human rights. The Federal Parliament, however, does have power under the Constitution to legislate with respect to "external affairs". The High Court of Australia has confirmed that this includes power to legislate for the implementation of treaty obligations entered into by Australia.

167. Exercise of this Federal power alone, however, would not be an adequate or efficient means for Australia to give effect to its international obligations. Much of the public infrastructure within Australia is at the State level. The States also administer significant elements of the Australian legal system. The States, therefore, exercise responsibility in many matters of relevance to the implementation of human rights.

168. The Constitution does not contain provisions in the nature of a bill of rights and the protection afforded to the civil and political rights of Australian citizens does not principally depend on any formal system of constitutional guarantees. The Constitution does, however, contain a limited number of express or implied guarantees of rights and immunities. These are discussed in detail below.

169. In Australia treaties, including human rights instruments, are not self-executing and require legislative implementation to be effective in Australian law. Certain human rights instruments appear as schedules to the *Human Rights and Equal Opportunity Act 1986*; however, this does not have the effect of making them part of Australian domestic law. The powers given to the Human Rights and Equal Opportunity Commission with reference to these instruments is discussed below.

170. The Human Rights and Equal Opportunity Commission is a permanent independent statutory authority with responsibility for the following Acts of Parliament:

Human Rights and Equal Opportunity Commission Act 1986;

Racial Discrimination Act 1975;

Sex Discrimination Act 1984;

Disability Discrimination Act 1992.

The Commission also assists the Privacy Commissioner in administering the *Privacy Act 1988*.

171. The functions of the Commission in relation to human rights include the power to handle individual complaints as well as broad policy and promotional functions.

172. New South Wales, Queensland, Victoria, South Australia, Western Australia, the Australian Capital Territory and the Northern Territory also have anti-discrimination legislation. There is no such legislation in the remaining jurisdiction of Tasmania. Federal human rights legislation operates throughout Australia and there are some areas of overlap with State and territory legislation.

B. Introduction

173. In Australia a variety of approaches and strategies are used to implement and protect human rights. These protections can be divided into two broad categories:

(a) Existing institutionalized processes present in a liberal and democratic society - such as parliaments and an independent judicial system; and

(b) Special legislative machinery to protect human rights, such as the Federal Human Rights and Equal Opportunity Commission and the Aboriginal and Torres Strait Islander Commission.

174. The high level of acceptance, protection and observance of human rights in Australia is founded upon a system of representative and responsible government, certain limited constitutional guarantees, statute law including specialized human rights legislation, the common law and an independent judiciary.

C. Implementation of international human rights treaties

175. In Australia treaties, including human rights instruments, are not self-executing and require legislative implementation to be effective in Australian law. Thus, an individual cannot complain in a domestic court about a breach of Australia's international human rights obligations unless the right has been incorporated into the domestic law. Before Australia signs,

ratifies or otherwise becomes bound by a treaty, the Government satisfies itself that any legislation necessary to implement the treaty is in place.

176. Certain human rights instruments appear as schedules to the *Human Rights and Equal Opportunities Act 1986*, however, this does not have the effect of making them part of Australian domestic law. The powers given to the Human Rights and Equal Opportunity Commission with reference to these instruments is discussed below.

177. Human rights treaties are also relevant to the exercise of administrative discretions and as material referred to in developing the common law. Some judges are of the view that "a relevant source of guidance in the statement of the common law ... may be the modern statements of human rights found in international instruments". [Kirby P. New South Wales Court of Appeal *Jago v. Judges of District Court* (1988) 12 NSWLR 558,569] Some recent decisions of the High Court have also indicated a judicial willingness to consider the implications of Australia's international human rights obligations in developing the common law.

178. In Australia's federal constitutional system, in which legislative, executive and judicial powers are shared or distributed between its Federal, State and Territory authorities, the implementation of treaties is effected by the Federal, State and Territory governments having regard to their respective constitutional powers and arrangements concerning their exercise. A statement to this effect has been made in regard to several human rights treaties to which Australia is a party.

179. The Constitution does not expressly confer on the Federal Parliament any specific or general power to legislate concerning human rights. Indeed, there is no reference in the Constitution to international law or to its place in the Australian legal system. The Federal Parliament, however, does have power under the Constitution to legislate with respect to "external affairs". The High Court of Australia has confirmed that this includes power to legislate for the implementation of treaty obligations entered into by Australia.

180. Exercise of this Federal power alone, however, would not be an adequate or efficient means for Australia to give effect to its international obligations. Much of the public infrastructure within Australia is at the State level. The States also administer significant elements of the Australian legal system. The States already, therefore, exercise responsibility in many matters of relevance to the implementation of human rights.

181. Provided the States can ensure that human rights obligations are given effect in the administration of those matters, the exercise of Federal power to achieve the same purpose would often give rise to unnecessary duplication of both infrastructure and expenditure. The Federal Government, in general, relies on States to give effect to international treaties where the particular obligation assumed affects an area of particular concern to the States and where it is also consistent with the national interest and the effective and timely discharge of Australia's treaty obligations.

182. The Federal and the State governments have adopted a cooperative approach towards the implementation of Australia's international obligations which is given expression in the *Principles and Procedures for Commonwealth-State Consultation on Treaties*. Under these procedures, prior to Australia becoming a party to any international agreement of significance to the States, consultations are held in an effort to secure agreement on the manner in which the obligations incurred should be implemented. The States are also closely involved in the preparation of reports to international bodies on the implementation of treaties and there are well-established channels of communication between the Federal and State governments to ensure that Australia can discharge its international responsibilities in a timely manner. A Standing Committee of the Federal Attorney-General and the Attorneys-General of the States and Territories has been in operation for many years and human rights issues form a regular item on its agenda.

183. Through the process of consultation the issue of a State or Territory acting so as not to give effect to Australia's obligations under human rights instruments has rarely arisen. Where such difficulties do arise or in the case of prolonged delay on the part of a State or Territory government it remains open to the Federal Government to take any action necessary to ensure that Australia gives effect to those obligations.

D. Existing institutionalized processes

1. Australian parliaments

184. The liberal democratic system of government in each of the Australian jurisdictions enables interested individuals to bring to notice areas in which human rights and fundamental freedoms are in need of protection or in need of further protection. Under the system of "responsible government" Ministers are individually and collectively answerable to the Parliament and can retain office only while they have the "confidence" of the Lower House. The government of the country is scrutinized closely by Parliament as Ministers must submit their policies to the Houses for approval and rely on Parliament to pass any laws which may be necessary to implement those policies. Ministers must also answer questions in the House concerning matters dealt with by their departments.

185. It is open to any individual to make representations regarding a grievance to a member of Parliament. Individuals often approach their local member who is directly accountable to the constituents in his or her electorate and will be subject to the scrutiny of those constituents at the next election. Members generally follow up such requests from constituents by correspondence with the responsible Minister or agency or by referral to the appropriate review mechanism such as the Ombudsman. Occasionally such representations become the subject of a question in Parliament.

186. In addition, several Parliamentary Standing Committees scrutinize proposed legislation and report on various aspects of that legislation. The Senate Standing Committee for the Scrutiny of Bills was established in 1981

for the purpose of reviewing proposed legislative measures and alerting the Senate, in which the Government usually does not have a majority, "to the possibility of the infringement of personal rights and liberties or the erosion of legislative power of Parliament".

187. The Senate Standing Committee on Regulations and Ordinances is required by its terms of reference to examine delegated or subordinate legislation which does not pass through the Houses of Parliament. The Committee guidelines specifically require the Committee to examine delegated legislation where it "takes away, reduces, circumscribes or qualifies the fundamental rights and liberties traditionally enjoyed in a free and democratic society". The Committee endeavours to ensure that delegated legislation:

(a) Is in accordance with the statute;

(b) Does not trespass unduly on personal rights and liberties;

(c) Does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and

(d) Does not contain matter more appropriate for Parliamentary enactment.

The Committee may write to the responsible Minister seeking, for example, an amendment of the proposed legislation and, if this process fails to meet the Committee's concerns, move to have the delegated legislation disallowed in the Senate.

2. Constitutional guarantees

188. The Australian Constitution was designed primarily to achieve economic union, to facilitate the developing trade and commerce between and within the States and to establish a new political entity, the Commonwealth of Australia. The Constitution does not contain provisions in the nature of a bill of rights and the protection afforded to the civil and political rights of Australian citizens does not principally depend on any formal system of constitutional guarantees.

189. However, the Constitution does contain a significant number of express or implied guarantees of rights and immunities. Some of the express guarantees are as follows:

(a) Any property acquired by the Federal Government must be acquired on just terms (sect. 51 (xxxi));

(b) Trial on indictment of any offence against any law of the Commonwealth shall be by jury (sect. 80);

(c) Interstate intercourse shall be free (sect. 92);

(d) The Federal Government shall not make any law to establish any religion or to interfere with religious freedom (sect. 116); and

(e) Citizens are not to be subjected to any discrimination in any State by reason of residence in another State (sect. 117).

190. The guarantees mentioned in sections 51 (xxxi), 80 and 116 of the Constitution only relate to interference by the Federal Government with the rights of citizens. There are considerable areas of law dealing with, or capable of affecting, human rights which are within the jurisdiction of the States and Territories. The Constitutions of some States expressly provide guarantees of certain civil and political rights. For example, section 46 of the *Constitution Act 1934* (Tasmania) provides a guarantee of freedom of religion.

191. Some provisions of the Constitution have also been found to include implied guarantees of individual rights. The High Court of Australia, has reached the view that section 71 of the Constitution, which separates judicial power from legislative and executive power and vets it in the courts, guarantees that matters which are normally the subject of judicial power (people's rights and liabilities, particularly in the criminal sphere) must be the subject of a fair trial.

192. The High Court has also indicated that there are some rights inherent in the structure of the Constitution itself. The Court has recently held that the Constitution is predicated on a system of "representative democracy" and that, since free communication and debate on political issues and institutions of government are essential to that system, legislation which infringes a freedom of communication on "political matters" is invalid, unless it is necessary to protect some other public interest. These decisions have highlighted the possibility that the Court may find other rights inherent in the Constitution.

A Bill of Rights for Australia

193. Since Federation there has been ongoing discussion of the need for a Bill of Rights for Australia and there have in fact been several attempts by the Federal Government to incorporate a Bill of Rights in Australian law. In 1973 the Human Rights Bill, which set out in legislative form most of the rights contained in articles 2-27 of the International Covenant on Civil and Political Rights (ICCPR), was introduced into Parliament. At this time Australia had not yet ratified the ICCPR. The Bill met with much opposition from the States and finally lapsed when a dissolution of both Houses of Parliament was declared in April 1974 prior to a Federal election.

194. In October 1985 the Federal Government introduced the Australian Bill of Rights Bill 1985. The Bill was intended to implement a charter of rights and freedoms based upon the ICCPR and was to operate as a guide to the judicial interpretation of Federal and Territory (other than Northern Territory) laws. As far as possible, laws were to be construed in such a way as not to conflict with the Bill of Rights. In addition, and with limited exceptions, the Bill of Rights was to prevail over inconsistent Federal and Territory (other than Northern Territory) laws. The Bill was withdrawn, however, in November 1986.

195. In 1988 an attempt was made to alter the Australian Constitution to strengthen three of the rights and freedoms already in the Constitution - trial by jury, fair compensation for acquisitions of property and freedom of religon. The *Constitution Alteration (Rights and Freedoms) Bill 1988* proposed to extend these rights and freedoms in relation to actions taken by the States and Territories. The Bill also required trial by jury where the accused was liable to imprisonment for more than two years or any form of corporal punishment, including capital punishment. The Constitution currently requires trial by jury where the trial is on indictment for any offence against a Federal law. The Bill passed through both Houses of Parliament but was defeated in the following referendum.

3. The common law

196. Australia has a common law legal system which means that the recognition and protection of many basic rights and freedoms relies on the enunciation of those rights over the centuries by judges in common law. Thus, for example, the right to personal liberty and to natural justice and many of the procedural rights contained in articles 9 and 14 of the ICCPR are provided for in the common law.

197. These fundamental rights are residual rights, that is, the right exists except to the extent that the right is limited by legislation. The courts will not construe a statute to take away a common law right unless the legislative intent is made clear by express words or necessary implication. The courts generally adopt a strict approach in this regard and where a statute is capable of being interpreted so that it does not interfere with a common law right, it will be interpreted in this way. The courts in interpreting a statute will also presume that Parliament did not intend to violate international law, for example, conventions to which Australia is a party.

4. The judiciary

198. The judiciary plays an important role in protecting certain recognized rights and freedoms which are regarded as fundamental and by developing rules of statutory construction which reduce the degree of legislative encroachment onto those rights and freedoms.

199. Recent decisions of the High Court have indicated that there are limitations on the legislative competence of Parliament to enact legislation which contravenes fundamental rights to be found implied in the structure of the Australian Constitution and the free and democratic nature of Australian society.

5. The media

200. The media in Australia enjoys a high degree of freedom which allows the press, radio and television to play a significant role in exposing breaches of human rights and exerting pressure for remedial action. The media is free to report parliamentary and court decisions relating to human rights matters and parliamentary questions are often prompted by media coverage of a particular matter.

6. Administrative law remedies

201. Over the centuries, procedures have been developed at common law for individuals to challenge the basis of administrative action in the courts. These procedures, however, have proved to be both technical and cumbersome as well as costly. Generally these common law grounds for review related to the lawfulness of the decision and did not allow for review of the merits of a decision.

202. Following the tabling of a report by the Federal Administrative Review Committee in 1971 which highlighted these difficulties the Australian Government established a legislative system to allow people to challenge a wide range of decisions made under federal laws and to obtain reasons for particular decisions that have been made. The scheme involved the following pieces of legislation: the *Administrative Appeals Tribunal Act 1975*; the *Administrative Decisions (Judicial Review) Act 1977*; the *Ombudsman Act 1976*; and the *Freedom of Information Act 1982*.

203. Amongst the States, only Victoria has implemented reform matching the new administrative law at the Federal level, by the introduction of a simplified procedure for obtaining judicial review, establishment of an Administrative Appeals Tribunal and enactment of freedom of information legislation. The State of Queensland has legislation allowing for judicial review of administrative decisions but no body equivalent to the Administrative Appeals Tribunal. Most States have enacted freedom of information legislation and each of the States does have an ombudsman.

204. The Administrative Appeals Tribunal, established by the Administrative Appeals Tribunal Act 1975 is an independent body whose function is to review decisions made by Federal Ministers, authorities and officials under more than 200 Acts of the Federal Parliament. The Tribunal is able to substitute its own decision in those areas in which it has jurisdiction, including social security, taxation, customs, and veterans' entitlements. Further additions to the Tribunal's jurisdiction are made from time to time. The Administrative Review Council was also established by the Administrative Appeals Tribunal Act. The principal functions of the Administrative Review Council are to make recommendations to the Attorney-General on matters of administrative law generally and, in particular, rights of review of administrative decisions and on the procedures of administrative tribunals.

205. The *Administrative Decisions (Judicial Review) Act 1977* provides for judicial review by the Federal Court of Australia of administrative action taken under Federal legislation. Where an order of review is sought by an aggrieved person, the Court is empowered to review the lawfulness of a decision, the conduct leading up to the making of a decision, or circumstances where there has been failure to make a decision. The grounds on which review may be sought and the powers of the Court are set out in the Act. In most cases, a person who is entitled to seek judicial review in respect of an administrative decision may seek a statement of reasons for the decision from the decision-maker.

206. The *Freedom of Information Act 1982* has the following objectives:

(a) To make available to the public information about the rules, practices and operations of Australian Government departments and authorities;

(b) To create a general right of access to documents in the possession of Ministers and agencies; and

(c) To allow a person to request that any record containing inaccurate or incomplete information relating to his or her personal affairs be amended.

In order to achieve these objectives the Act defines the rights of members of the public to obtain access to documents, and sets out a range of obligations and restrictions on departments and the public for exercising these rights.

207. The right of access does not extend to all documents or to all agencies. Exempt documents include documents that affect the national security, defence, international relations and relations with States, Cabinet and Executive Council documents, internal working documents where release would be contrary to the public interest and documents that affect enforcement of the law and protection of public safety.

208. Agencies which are exempt either wholly or in relation to certain activities include security intelligence agencies and those agencies which are wholly engaged in commercial activities in competition with the private sector.

209. All States and the Australian Capital Territory also have freedom of information legislation.

210. The Office of the Commonwealth Ombudsman was established by the *Ombudsman Act 1976* to investigate complaints about the administrative actions of all Commonwealth government departments and those other Commonwealth agencies which are prescribed authorities for the purpose of the Ombudsman Act. As well as investigating individual complaints, the Ombudsman can investigate matters on his or her own motion.

211. In addition to this general role, the Ombudsman has special roles:

(a) To act as the Defence Force Ombudsman and to investigate matters relating to service in the Australian Defence Force (under 1983 amendments to the Ombudsman Act);

(b) To investigate complaints against the Australian Federal Police (under the *Complaints (Australian Federal Police) Act 1981*);

(c) To investigate complaints about the administration of the Act (under the *Freedom of Information Act 1982*); and

(d) To monitor and report on the keeping of records of telephone interceptions conducted by Commonwealth law enforcement bodies (under the *Telecommunications (Interception) Act 1979*).

212. Although most investigations are conducted with a minimum of formality, the Ombudsman has extensive powers when conducting an investigation to require the production of documents or information or to require people to attend and give information. The Ombudsman has power to decline to investigate a complaint or to cease investigating where the matter is able to be dealt with by some other body or for a variety of other reasons. After completing an investigation, the Ombudsman may conclude that the action was unreasonable, illegal, unjust, oppressive, improperly discriminatory, based on a mistake or wrong. He or she may conclude that an action was taken according to law, but that the law itself is unreasonable, unjust, oppressive or improperly discriminatory.

213. If the Ombudsman reaches such a conclusion, and considers that something should be done to rectify the problem, he or she is required to report to the department or agency concerned and to recommend what action he or she considers should be taken. If the recommendation is not accepted, the Ombudsman may report to the Prime Minister and to the Parliament. Relatively few cases are the subject of formal reports to departments or agencies, even fewer reports are made to the Prime Minister and reports to the Parliament are very rare.

214. The Ombudsman has offices in all mainland States and in the Australian Capital Territory. In Tasmania and the Northern Territory, the Commonwealth Ombudsman is represented by the State and Territory Ombudsman respectively.

215. All Australian States, the Australian Capital Territory and the Northern Territory have legislated for an office to perform similar functions to those performed in the Commonwealth sphere by the Commonwealth Ombudsman. The names of such bodies vary.

216. There are a variety of other specialist review tribunals in the Federal sphere, for example, the Immigration Review Tribunal, which provide review on the merits of administrative decisions in specific areas such as veterans' affairs, social security and migration. Review by the Ombudsman, the Human Rights and Equal Opportunity Commission and the Federal Court under the Administrative Decisions (Judicial Review) Act may also be available in relation to many of these decisions.

217. The Commonwealth and States each has separate industrial relations legislation and independent industrial tribunals. The Federal Industrial Relations Commission, established by the *Industrial Relations Act 1988*, is the most important tribunal in setting Australian conditions of employment. It has compulsory powers of conciliation and arbitration to prevent and settle certain industrial disputes.

218. Legal minimum rates of pay for about 80 per cent of Australian workers are prescribed in awards and determinations of Federal and State industrial tribunals which are legally enforceable. Generally awards set only minimum wages and other minimum conditions. In determining minimum award wages tribunals have regard to relative work values and take into account work performed and the conditions under which it is performed.

219. The Prime Minister has foreshadowed the introduction of legislation to guarantee minimum wages and certain other conditions for all Australians.

220. The Federal Commission also has the power to hear and determine applications relating to registration, amalgamation and deregistration of organizations. Registration under the Act or under various State Acts is not compulsory for organizations of employers or workers, but is necessary for full participation in the industrial relations system established under the Act. Unregistered organizations, however, can and do represent the industrial interests of their members outside the system established by the Act.

221. The Federal Commission is required to take account of the principles embodied in the *Racial Discrimination Act 1975* and the *Sex Discrimination Act 1984* in employment matters and the respective Discrimination Commissioners may be granted leave to intervene in any dispute before the Commission.

222. Australian Governments, from time to time, establish Royal Commissions to inquire into, and report on, matters of public concern. The most recent Royal Commission with significant human rights implications was the Royal Commission into Deaths in Custody of Aboriginals and Torres Strait Islanders (1987/89).

E. Specialized human rights machinery

1. Federal human rights Legislation

223. The major federal legislation directly protecting human rights is as follows:

(a) The *Racial Discrimination Act 1975*, implementing most of the provisions of the Convention on the Elimination of All Forms of Racial Discrimination affecting the enjoyment of human rights, including making racial discrimination unlawful in specified areas, such as employment, education, and provision of goods and services;

(b) The *Sex Discrimination Act 1984*, implementing most of the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women. This Act prohibits discrimination on the grounds of sex, marital status and pregnancy in the administration of Federal laws and programmes and in certain specified areas which include employment, accommodation, education, the provision of goods, facilities and services, the disposal of land and the activities of clubs. The Act also has as objectives the elimination, as far as possible, of discrimination involving sexual harassment in the workplace and in educational institutions, and the promotion within the community of the recognition and acceptance of the principle of the equality of men and women;

(c) The *Human Rights and Equal Opportunity Commission Act 1986*, which establishes the *Human Rights and Equal Opportunity Commission* and gives the Commission certain functions (see below) by reference to the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child, the Declaration on the Rights of Disabled Persons, the Declaration on the Rights of Mentally Retarded Persons, the Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (International

Labour Organisation Convention No. 111) and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The Attorney-General may also declare other international instruments to be relevant for the purposes of the Act. Such declarations were made in January 1993 in relation to the Convention on the Rights of the Child and in February 1993 in relation to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;

(d) The *Privacy Act 1988*, which gives more particular effect to the right to privacy recognized in article 17 of the International Covenant on Civil and Political Rights, and develops this in more detail by reference to Guidelines on the Protection of Privacy and Transborder Flows of Personal Data produced by the Organisation for Economic Co-operation and Development;

(e) The *Disability Discrimination Act 1992* which makes unlawful discrimination against persons with disabilities in certain circumstances. The Act makes unlawful discrimination on the grounds of disability in the areas of employment, education, the provision of goods, services and facilities, accommodation, the disposal of land, the activities of clubs, sport, the administration of Federal laws and programmes and in requests for information. Harassment of a person on the grounds of disability is also made unlawful.

224. The Racial Discrimination Act, the Sex Discrimination Act and the Disability Discrimination Act, in accordance with the definitions adopted by the relevant international instruments, provide that special measures adopted to ensure the equal enjoyment or exercise of human rights by particular racial groups, persons who have a disability and women are not unlawful.

225. The Federal public service has had affirmative action programme in force for a number of years. These were reinforced by the Equal Employment Opportunity (Commonwealth Authorities) Act passed in 1987. In 1986 the Australian Government passed the Affirmative Action (Equal Employment Opportunity for Women) Act which requires businesses with 100 or more employees to establish affirmative action programme for women. These programmes must evaluate the employer's policies and practices to prevent discrimination against women employees, identify statistical or other patterns of discrimination against women employees and set objectives for achieving equality of opportunity for women in employment. Annual public reports of the programmes must be prepared. A Director of Affirmative Action has been appointed to monitor the programmes and review the effectiveness of the legislation.

2. <u>The Human Rights and Equal Opportunity Commission</u>

226. The Human Rights and Equal Opportunity Commission is a permanent independent statutory authority with responsibility for the *Human Rights and Equal Opportunity Commission Act 1986, the Racial Discrimination Act 1975, the Sex Discrimination Act 1984 and the Disability Discrimination Act 1992*. The Commission also assists the Privacy Commissioner in administering the *Privacy Act 1988*.

227. The Commission comprises a part-time President (at present a former Justice of the High Court of Australia) and six full-time Commissioners. These are:

The Human Rights Commissioner (who is the Executive Head of the Commission);

The Race Discrimination Commissioner;

The Sex Discrimination Commissioner;

The Aboriginal and Torres Strait Islander Social Justice Commissioner;

The Disability Discrimination Commissioner; and

The Privacy Commissioner.

228. The national office of the Commission is located in Sydney. In most States which have their own anti-discrimination legislation, cooperative arrangements have been negotiated by the Federal Commission, pursuant to which State authorities act as agents for the Federal Commission or, alternatively, the Federal Commission acts as agent for the State authorities. In Tasmania, which has not passed anti-discrimination legislation, the Federal Commission maintains a regional office to ensure that the protection of human rights afforded by Federal law is accessible to all Australians.

229. As an independent statutory authority the Commission is not subject to direction by the Government in the performance of its functions.

230. The functions of the Commission in relation to human rights are set out in section 11 of the Human Rights and Equal Opportunity Commission Act. These functions include the power to handle individual complaints as well as broad policy and promotional functions, including the following:

(a) Conducting research, educational and other programmes to promote acceptance, understanding and public awareness of human rights;

(b) Examining existing and, when required by the Attorney-General, proposed Federal legislation for consistency with human rights;

(c) Reporting to the Parliament on laws that should be made or other action that should be taken in relation to human rights to comply with Australia's international obligations on human rights; and

(d) Examining actions or practices of Federal authorities or actions under Federal law for consistency with human rights.

"Human rights" are defined as those rights set out in the various instruments scheduled to or declared under the Act.

231. The Commission is empowered to attempt to reach a conciliated settlement of human rights complaints against Federal authorities, and to report to the Attorney-General if such a settlement cannot be reached.

232. Under the Sex Discrimination Act, the Racial Discrimination Act and the Disability Discrimination Act, the Commission has promotional, educational and policy functions in relation to these forms of discrimination broadly similar to its functions under the Human Rights and Equal Opportunity Commission Act in relation to other human rights matters. In addition, the Race Discrimination Commission is required to prepare an annual "State of the Nation" report relating to the situation of Australians of non-English speaking backgrounds. The complaint-handling functions and powers under these three Acts, however, are significantly broader. While human rights complaints are restricted to complaints against Federal agencies, the Racial Discrimination Act and the Disability Discrimination Act applies to discrimination by any body or person. The Sex Discrimination Act applies to individuals, corporations and Federal authorities and to State governments, except in employment matters.

233. The Sex Discrimination Commissioner, Race Discrimination Commissioner and Disability Discrimination Commissioner are empowered to attempt to reach a conciliated settlement between the complainant and the alleged discriminator. If a solution acceptable to both parties cannot be reached, the matter may be referred for a hearing by the Commission. The Commission may make findings as to whether discrimination has occurred and offer a wide range of remedies which are not restricted to financial compensation. Enforcement of the Commission's determinations varies according to the type of respondent involved. Orders are directly binding where the respondent is a Federal government department or authority. In other cases, orders are registered with the Federal Court, and take effect as Court determinations unless an application for review by the Court is made within a set time period.

234. Under section 31 of the Human Rights and Equal Opportunity Commission Act, the Commission has further responsibilities in relation to discrimination in employment based on ILO Convention No. 111. The Commission's jurisdiction in this area is not limited to Federal matters but extends to employment throughout Australia.

235. The grounds of discrimination covered by this provision include those set out in the Convention - that is, race, colour, sex, religion, political opinion, national extraction or social origin - together with a number of additional grounds specified by Federal government regulation in 1989. These are: age, medical record, criminal record, impairment (including HIV infection), physical disability, mental, intellectual or psychiatric disability, marital status, nationality, sexual preference, trade union activity, or the former or imputed existence of any of these grounds. The Commission may attempt to conciliate complaints in this area. If a matter cannot be conciliated, the matter may be the subject of a report to the Attorney-General. There are no formal determination or enforcement procedures.

236. One of the most significant and innovative powers given to the Human Rights and Equal Opportunity Commission is the power to conduct public inquiries into human rights matters. Such public inquiries place major human

rights issues in Australia on the political and public agenda. The Commission has conducted a wide range of inquiries into issues of national concern including:

National Inquiry into Human Rights and Mental Illness;

Homeless Children Inquiry;

National Inquiry into Racist Violence;

Inquiry into the provision of medical services to the Aboriginal communities of Cooktown, Wujal Wujal and Hopevale;

Inquiry into the distribution of alcohol in the Northern Territory;

Inquiry into possible sex discrimination in overaward payments.

237. At the request of the Australian Government the Human Rights and Equal Opportunity Commission plays an important international role. The Commission provides input to Australia's periodic reports under the various international human rights instruments. The Commission has also been involved, as part of Australian government delegations, in the development of international human rights instruments such as the Convention on the Rights of the Child, the Principles for the protection of persons with mental illness and for the improvement of mental health care and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.

238. At the request of the Government the Commission has also participated in other United Nations activities such as the Working Groups on Indigenous Populations and the Commission on Human Rights. The Commission participated in and contributed a major paper to the second International Workshop on National Institutions for the Promotion and Protection of Human Rights. A number of countries including India, Indonesia, the Russian Federation and Thailand, have recently expressed interest in the Australian Commission as a possible model for the establishment of their own independent machinery.

3. The Privacy Commissioner

239. The Privacy Commissioner is a member of the Human Rights and Equal Opportunity Commission, although the office is created by, and its functions are conferred separately in, the *Privacy Act 1988*. That Act is concerned to protect the privacy of personal information held by Federal Government agencies. The standards imposed on Federal government agencies are set out in the Information Privacy Principles contained in the Act. These Principles are based on OECD guidelines and provide basic standards for the collection, storage, use and disclosure of personal information by agencies.

240. The Act also establishes a regulatory regime for privacy protection in respect of "tax file numbers", which are unique identifiers used in the taxation system. The Act confers on the Privacy Commissioner, amongst other powers, power to issue guidelines concerning the collection, storage, use and security of tax file numbers, and to investigate acts or practices that may involve unauthorized disclosure of tax file numbers. The tax file number

guidelines are analogous to the Information Privacy Principles and they are not confined to regulating Federal government agencies, but apply also to such private sector bodies as taxation agents, employers, and solicitors.

241. A similar regulatory regime is established under the Privacy Act to regulate the use and disclosure of personal information by credit reporting agencies. Credit reporting agencies hold details of individuals' creditworthiness and provide this information on request to credit providers. The Privacy Commissioner has issued a Code of Conduct for use in the credit industry.

242. The Privacy Commissioner has also developed Guidelines for Data-Matching in Federal Administration to assist in monitoring the data-matching programme and use of matching results by government departments. The Privacy Commissioner also has power to enforce safeguards applying to the use and disclosure of spent conviction information, conferred by the *Crimes Act 1914*.

243. Amongst the Privacy Commissioner's wider functions relating to the privacy of personal information held by Federal government agencies is the function to examine proposed Federal legislation that may authorize actions which would be breaches of privacy, in respect of which the Commissioner has the power to report to the Parliament. Where the Commissioner finds that there has been a breach of either the Tax File Number Guidelines or the Information Privacy Principles, the Commissioner may seek either to conciliate between the parties, or conduct an investigation as a result of which he or she may make a determination that may include an award of damages for the breach. Such awards are enforceable, if necessary, through action initiated by the Privacy Commissioner in the Federal Court.

244. The Privacy Commissioner routinely audits the extent of compliance with the Privacy Act by government agencies, credit reporting agencies, credit providers and tax file number users.

4. <u>The Aboriginal and Torres Strait Islander Commission and the Social Justice Commissioner</u>

245. On 5 March 1990, the Australian Government through legislation established the Aboriginal and Torres Strait Islander Commission. The Commission has 20 Commissioners, all of whom are Aboriginal or Torres Strait Islander people, and 60 Regional Councils. All members of Regional Councils are elected by Aboriginal and Torres Strait Islander people. The Commission is accountable both to the Parliament and to the Aboriginal and Torres Strait Islander people of Australia.

246. The Commission is the main policy-making body in Aboriginal affairs. It represents a partnership between elected Aboriginal and Torres Strait Islander representatives, the bureaucracy and the Minister for Aboriginal and Torres Strait Islander Affairs. An important feature of the Commission's structure is that it encourages Aboriginal and Torres Strait Islander people to participate in the decision-making process of government. This allows indigenous people to make decisions about the programmes and policies that affect them.

247. The Commission administers a number of programmes aimed at improving the social advancement of Aboriginal and Torres Strait Islander people. These programmes deal with community housing and infrastructure, home loans, health, substance abuse, community development support, recreation and sport, and law and justice. The Commission also administers a number of employment programmes to promote Aboriginal and Torres Strait Islander economic independence through the creation of employment and training opportunities.

248. As well, the Commission acquires properties on behalf of Aboriginal and Torres Strait Islander corporations, and takes administrative action to establish secure title to land for indigenous communities. It also assists the preservation, protection and promotion of Aboriginal and Torres Strait Islander culture through its heritage protection, art and culture, and broadcasting and communication programmes.

249. The Office of Indigenous Women within the Commission provides a gender-specific perspective on behalf of Aboriginal and Torres Strait Islander women.

250. The Commission takes a positive role in international matters of interest to indigenous people. It liaises closely with Aboriginal and Torres Strait Islander non-governmental organizations in order to promote Aboriginal and Torres Strait Islander peoples' perspectives on social, economic and cultural matters in international forums such as the United Nations Working Group on Indigenous Populations.

5. The Office of the Status of Women

251. In response to the report of the recent Royal Commission into Aboriginal Deaths in Custody the Federal Government agreed to establish the office of Aboriginal and Torres Strait Islander Social Justice Commissioner within the Human Rights and Equal Opportunity Commission. The new Commissioner's major responsibility is to prepare for the Federal Government an annual "State of the Nation" report on the enjoyment and exercise of human rights and fundamental freedoms by Aboriginal and Torres Strait Islander people and on any action necessary to secure for Aboriginal and Torres Strait Islander peoples the full and equal enjoyment of their human rights and fundamental freedoms.

252. The Office of the Status of Women forms part of the Department of the Prime Minister and Cabinet. The role of the office is to develop and monitor policies and administer programmes relating to the status of women in Australia and the help raise the status of women through programmes and policies which provide economic security and independence, freedom from discrimination and violence, and equality of opportunity.

253. Government policy on the status of women is contained in the National Agenda for Women, developed by the Office following extensive consultations

with women across Australia and released in 1987. A new and updated National Agenda was released early in 1993, with Action for the Future specified in the year 2000.

254. Examples of specific areas in which the Office has taken a major initiating role include the development of the National Policy on the Education of Girls in Australian Schools (Convention on the Elimination of All Forms of Discrimination against Women, art. 10), the National Women's Health Policy (art. 12), the establishment of a National Working Party on the Portrayal of Women in the Media (art. 5), establishment of the National Committee on Violence against Women and the subsequent development of a National Strategy On Violence Against Women (art. 5), responsibility for the community education programme relating to Workers with Family Responsibilities following Australia's ratification of ILO Convention No. 156 (art. 11), and child care policies and programmes, which relate to the implementation of several articles.

255. The Office publishes and disseminates a range of information on these and other issues, including information on international treaties concerned with the status of women. This has included a guide to the Convention on the Elimination of All Forms of Discrimination Against Women, addressing issues such as the need for the Convention, what the Convention says and how the Convention operates. An information kit on the Convention is currently being produced in conjunction with the National Women's Consultative Council.

6. The Office of Multicultural Affairs

256. The Office of Multicultural Affairs also forms part of the Department of the Prime Minister and Cabinet. The Office ensures that the Prime Minister and, through him, Cabinet as a whole have access to advice on the multicultural implications of all government decisions. The Office's role includes:

(a) To advise the Prime Minister and the Government as a whole;

(b) To examine policy proposals from all areas of Government in order to assess their impact on Australia's multicultural society;

(c) To monitor and coordinate implementation of the Government's Access and Equity strategy which aims to ensure that all Australians, including people of non-english speaking background, enjoy equal access to, and secure their equitable share of, mainstream government programmes and services;

(d) To develop effective liaison and consultation mechanisms with the broad community, including the ethnic communities;

(e) To initiate research into key areas of policy and programme development; and

(f) To promote wider community understanding of multiculturalism.

F. State and Territory anti-discrimination and equal opportunity legislation

257. New South Wales, Queensland, Victoria, South Australia, Western Australia, the Australian Capital Territory and the Northern Territory also have anti-discrimination legislation. There is no such legislation in the remaining jurisdiction of Tasmania.

258. Federal human rights legislation operates throughout Australia and there are some areas of overlap with State and Territory legislation. This has caused problems in the past where State legislation has been struck down by the High Court on the ground that it was inconsistent with Federal legislation on the same subject. This problem has been resolved by including provisions in the Federal legislation which specifically preserve the operation of the State legislation.

259. The Federal legislation also provides that where a person has made a complaint on a particular matter under the relevant State or Territory legislation, he or she may not also make a complaint under the Federal legislation.

260. A number of States have legislation which provides for a broader range of protections against discrimination than the grounds currently prohibited or the subject of only limited protection under federal legislation. For example, the Australian Capital Territory anti-discrimination legislation prohibits discrimination on the following grounds which are not prohibited under Federal legislation: sexuality, transsexuality, religious or political conviction and association with a person identified by reference to one of these attributes.

G. Non-governmental organizations

261. Non-governmental organizations play an active and important role in the promotion and protection of human rights in Australia. There are a large number of such groups in Australia and many operate as lobby groups, putting forward submissions to governments on matters of particular concern. Some of these agencies have received funding from the Government to assist in their work. The Aboriginal and Torres Strait Islander Commission provides support for non-governmental organizations dealing with indigenous peoples issues by, for example, funding such organizations to attend United Nations forums on human rights. The Human Rights and Equal Opportunity Commission is specifically mandated to work with and consult non-governmental organizations in the performance of its functions.

H. International machinery for the protection of human rights

262. The Australian Government recognizes the value of United Nations machinery in complementing domestic human rights arrangements and has expressed its commitment to the observance of its international human rights obligations by allowing international scrutiny of its human rights performance under the following processes.

263. Australia acceded to the Optional Protocol to the International Covenant on Civil and Political Rights on 25 September 1991 following lengthy consultations with the State and Territory governments. Accession to the Optional Protocol was one of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Optional Protocol came into effect for Australia on 25 December 1991. The procedure under the Optional Protocol allows individuals to communicate with the United Nations Human Rights Committee on alleged violations by Australia of the rights recognized in the International Covenant on Civil and Political Rights, provided all domestic remedies have been exhausted.

264. On 28 January 1993 Australia deposited with the United Nations declarations under the following human rights instruments:

(a) Convention on the Elimination of All Forms of Racial Discrimination, article 14. A declaration under this article allows the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals relating to complaints of racial discrimination by Australia, provided all domestic remedies have been exhausted;

(b) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 22. A declaration under this article allows the Committee against Torture to receive and consider communications from individuals relating to alleged breaches of the Torture Convention by Australia, provided all domestic remedies have been exhausted;

(c) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 21. A declaration under this article allows the Committee against Torture to receive and consider communications from other States parties relating to alleged breaches of the Torture Convention by Australia. Such communications can only be made by a State party which has itself made the same declaration;

(d) International Covenant on Civil and Political Rights, article 41. A declaration under this article allows the Human Rights Committee to receive and consider communications from other States parties relating to alleged breaches of the Covenant by Australia. Such communications can only be made by a State party which has itself made the same declaration.

The declarations are effective immediately.

IV. INFORMATION AND PUBLICITY

A. The Human Rights and Equal Opportunity Commission

265. The Human Rights and Equal Opportunity Commission has two major objectives:

(a) To increase the understanding, acceptance and observance of human rights and equal opportunity in Australia; and

(b) To promote a fairer society by protecting basic human rights and ensuring that Australia complies with its human rights obligations under international law.

266. In keeping with its charter to increase the understanding, acceptance and observance of human rights and equal opportunity in Australia, the Commission undertakes a continuing educative role. The President, Commissioners and staff frequently address gatherings ranging from small, special-interest groups to major conferences. The Commission continues to use innovative ways of focusing public attention on human rights issues - including the annual Human Rights Awards (see below) and participation in public exhibitions.

267. The Commission maintains both a media unit and an education and promotion unit to ensure that the general public is made aware of human rights issues and that media coverage is well informed. The Commission also has a publications programme so that its reports, pamphlets, and occasional papers are published and distributed to the extent that resources permit.

268. Recently the community education work of the Commission has focused increasingly on reducing discriminatory practices in the workplace by helping employers to comply with their obligations under anti-discrimination legislation and thus with Australia's international obligations. Public inquiries conducted by the Commission also highlight major human rights issues in Australia.

269. A major promotional activity for the Commission is the presentation of the annual Human Rights Medal and Awards in Human Rights Week, established in 1987 to recognize Australians who have made a significant contribution to human rights in this country. The Human Rights Awards acknowledge the promotion of public understanding and discussion of human rights in Australia; in the community and through the media and various branches of the arts.

B. Report writing

270. The following government agencies have responsibility for preparing reports under the major United Nations human rights instruments:

International instrument	Responsible government agency
International Covenant on Civil and Political Rights	Attorney-General's Department
International Covenant on Economic, Social and Cultural Rights	Department of Foreign Affairs and Trade
Convention on the Elimination of All Forms of Racial Discrimination	Department of Foreign Affairs and Trade

Convention on the Elimination of All Forms of Discrimination Against Women	Department of the Prime Minister and Cabinet - Office of the Status of Women
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	Attorney-General's Department
Convention on the Rights of the Child	Attorney-General's Department

271. The Department of Foreign Affairs and Trade is responsible for submitting the reports to the various treaty bodies. In preparing the reports, government agencies consult widely with other Federal, State and Territory government agencies. Recently, efforts have also been made to consult relevant non-governmental organizations.

272. In order to produce comprehensive Australian reports, it is necessary to provide information from the nine jurisdictions of which Australia is composed. This is an extremely resource-intensive activity at the Federal and State level. Consultation with non-governmental organizations during the preparation of the reports is also desirable but, once again, requires extensive resources. These factors have led to delays in the submission of some reports to human rights treaty bodies.

273. A range of strategies has been used to overcome these problems. For example, in preparing the second report to the Committee on the Elimination of Discrimination against Women (CEDAW), the Office of the Status of Women made provision for financial support to the States and Territories in order to help them to gather material and present it adequately. At the Commonwealth level the preparation of the report was facilitated by the annual monitoring of status of women policies and programmes through the Women's Budget Statement and National Agenda Implementation Report.

274. Preparation of the reports does provide each jurisdiction with an opportunity to consider the measures it has taken to ensure that Australia's international obligations are implemented. States and Territories are encouraged to consult with local non-governmental organizations in the preparation of their submissions to the final report.

275. Reports prepared under the various conventions are public documents and available on request. Australia's second report under the Convention on the Elimination of All Forms of Discrimination against Women, completed in June 1992 and entitled "Women in Australia", was given wide publicity and was presented personally by the Prime Minister to the Chairperson of CEDAW. It is on sale at Australian Government Publishing Service bookshops. The report has been distributed to non-governmental organizations, libraries, academic institutions and all Australia's overseas posts. Future reports under the other conventions will also be distributed in this way. Consideration is also being given to tabling future reports in Parliament.

C. State and Territory anti-discrimination and equal opportunity agencies

276. All State and Territory anti-discrimination and equal opportunity agencies have information dissemination programmes to inform and educate the community about human rights and anti-discrimination law and to promote human rights and equal opportunity. These programmes include running seminars, conferences and courses, giving speeches, presentations and training sessions, publishing information and reports, answering requests for information from the public, producing guidelines for employers, the media and other groups and a wide range of other activities.

ANNEX

Australian Federal, State and Territory human rights agencies

Federal

Human Rights and Equal Opportunity Commission
Level 24, American Express Building
388 George Street
Sydney NSW 2000

GPO Box 5218
Sydney NSW 2001

Australian Capital Territory

ACT Human Rights Office
GPO Box 422
Canberra ACT 2601

Northern Territory

Human Rights and Equal Opportunity Commission
Regional Office
80 Mitchell Street
PO Box 363
West End 4101
Darwin NT 0800

(Locked Bag No. 4
Darwin NT 0801)

New South Wales

NSW Anti-Discrimination Board
Level 4
Australia Council Building
181 Lawson Street
Redfern NSW 2016

Queensland

Anti-Discrimination Commission
187 Melbourne Street
South Brisbane Qld 4101

South Australia

Equal Opportunity Commissioner
30 Wakefield Street
Adelaide SA 5000

Tasmania

Human Rights and Equal Opportunity Commission
Regional Office
Suite 4 Ground Floor
City Mill
11-13 Morrison Street
Hobart TAS 7000

Victoria

Equal Opportunity Commission
4th Floor
356 Collins Street
Melbourne Vic 3000

Western Australia

Equal Opportunity Commissioner
5 Mill Street
Perth WA 6000